

Ulric Von Hütten

An Epistle Congratulatory
to the Right Reverend
The Bishops of the
Episcopal Court at Camden.

BX5960
.D63H8



BX5960

D63H8

To the Commission

AN
EPISTLE CONGRATULATORY

LIBRARY OF PRINCE
* MAR 25 1911
THEOLOGICAL SEMINARY

TO

The Right Reverend The Bishops

OF

THE EPISCOPAL CONFERENCE

AT

CAMDEN.

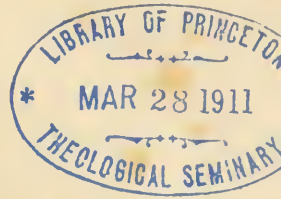
FROM

ULRIC VON HÜTTEN.

Touch not mine anointed and do my prophets no harm.



NEW-YORK :
1853.



AN

EPISTLE CONGRATULATORY

TO

The Right Reverend The Bishops

OF

THE EPISCOPAL COURT

AT

CAMDEN.

FROM

ULRIC VON HÜTTEN.

Touch not mine anointed and do my prophet no harm.

Right Reverend Fathers,

Your lot has been one of rare felicity.

You are called, in the good providence of God, to be the successors of His apostles, the heritors of the mysterious illumination which flows down that illustrious line. It has been your fortune to exemplify the ultimate development of the life-giving principle of your order.

Distressing doubts obscured to the eye of flesh the Spiritual graces of your brother of New Jersey.

Carnal-minded laymen ventured to judge him by the rules prevailing among men of this world.

Three Bishops were found who yielded to their importunities, and presented him for trial by the rule of vulgar morals.

You, penetrated with the genuine spirit of apostolic churchmanship, could see nothing but "purity and uprightness" where they saw crimes; and finding no fault in the man, you bade him go, without day.

That is a precedent, Right Rev. Fathers, not soon nor easily to be forgotten. It will settle for centuries the law of your Church. It will forever illustrate the morals of the Church in the middle of the nineteenth century. It throws no small light on the relation between episcopal prerogative and episcopal morals. It reveals some of the most recondite qualities and tendencies of the episcopal order—which yet a careless eye might overlook, or a cursory glance fail to catch or comprehend.

I pray your indulgence while I fix this fleeting light: and while the minds of men are alive to the facts, endeavor to draw that instruction your judgment is so well calculated to afford.

The first act of this memorable process was concluded at Burlington in the year of our Lord 1852.

There the Convention of New Jersey intervened with filial reverence to shield their spiritual father from the humiliation of trial on a presentment supported only by the oaths of laymen. The Presentees met that intervention not merely with argument, but with

threats. Standing in the presence of the whole Church, they there declared that, "If under the present motion the trial of the respondent be dismissed, our trial before that tribunal is ended. But allow us, Right Rev. Brethren, most affectionately to remind you that *then* your trial at that great tribunal begins."

That menace, though failing of its immediate object to deter you from solemnly maintaining the rights of Bishops to do what to them seems good, has at last accomplished its own prophecy.

On two trials you have refused investigation. You are now on trial before the Bar of the Laity of the Church for your conduct on those trials.

It is feared that a blind and perverse generation will try you by other than those elevated, refined and spiritual principles by which alone your regenerate minds are regulated; and that if they be not explained, so as to be intelligible to the mass of mankind, serious damage may come to your Holy order, and through it to the millions dependent on its prerogatives for their spiritual life. Your predecessors have ever been ready indulgently to explain what might be beyond their unaided reason; and I feel sure you will gladly accept at my hands an humble attempt to interpret, for their benefit and your quiet, the high and solemn act of *purgation* you have performed.

The chief difficulty lies in a plain confusion of ideas.

Your accusers stumble at their first step. They saw a man accused of grave acts of crime and immorality: and they saw you restore him without a trial to his holy functions. They accuse you of being the accomplices of his iniquities. They gratuitously assume that there is no difference between *bishops and men*.

They are guilty of forgetting the plain and settled distinction between *lay* and *episcopal* morality. They expected you to try a Bishop by the ordinary rules of morality among men. You were contemplating only an extraordinary and exceptional rule, confined in its application strictly to the conduct of *Bishops*. It is one not bearing the remotest relation to the conduct of laymen. Even Presbyters and Deacons are excluded from its benefit.

Whether the *person accused did the acts specified* is entirely beside the question. It is utterly immaterial that a Bishop is charged with acts which in a layman would have been felony, perjury, falsehood, cheating, breaches of trust, living sumptuously every day, gambling speculations at other peoples risk. These things in Wall-street would be iniquities. They might be of a questionable morality anywhere—but in the person of a Bishop of the Church of Christ, in *him* they are out of the category of crimes. No one can find in the Bible any

Bishop held responsible for such acts. There is not a single such case from the beginning to the end of the Sacred Canon.

It is this great, simple, and fundamental principle which you have been called on to illustrate and establish in this memorable proceeding—which has been blessed to the confirmation of the independence of Bishops, and the drawing of the line of demarcation consecrated for ages between the morals of the layman and the morals of the priest.

It is to the height of this high argument I would lift myself.

To do so effectually, I must beg your indulgence while I recall the several steps of this momentous process; for the traces of this peculiar spiritual morality so pervade the simplest acts of this great drama, that serious loss will be experienced if any of them be passed in silence.

Even the preliminary proceedings before the Convention of New Jersey are rich in instruction, and afford the most gratifying proof of the entire security with which a Bishop may rely on the protection of a Convention which he has by the rod of correction and the voice of praise brought up in the way it should go.

Prior to the year 1849 public rumour, with a thousand tongues no better than they should be, impeached the honesty and sobriety of the Bishop of New Jersey. A resolution of investigation was offered and voted down unanimously. The Convention was penetrated with the great principle, that sin, if secret, had better not be exposed; that though a Bishop should be of good report of them that are *without*, yet here the report proceeded from those *that were within*; and that the Apostle in laying down that rule rather declared the duty of them that are without not to spread a bad report to the prejudice of a holy Bishop, than indicated any quality of a Bishop's conduct; and that the existence of such reports was rather a reason for condemning the authors for violating their duty in spreading them, than for putting the Bishop to the trouble of an investigation into the truth of charges of what he *could not as a Bishop* be guilty.

These reasons were so satisfactory, that though the Bishop did not suggest, he did not reject them; and feeling his duty as a Christian man to live down evil reports, rather than with a spirit of wordly pride demand an investigation into his purity, he *acquiesced* in the resolution of his Convention, which refused to treat the favor of the Bishop, and the peace of the Diocese as of such light moment, as to be jeopardied by such an investigation.

Even in this faithful body there were one or two members who volunteered, in debate, assurances that an investigation would follow

upon charges by responsible names; but the Convention carefully refrained from entangling their feet in the snare of any such resolution.

Nothing can better illustrate the obdurate perversity of the world than that this pleasing confidence of the Convention did not stop the wagging of the tongue of scandal. That Convention was filled with the bosom friends of the Bishop, who must have known him and his affairs intimately—with Missionaries whose bread depended on his bountiful will—with creditors whose hopes of payment depended on the success of the Bishop, which was intimately bound up with his purity of character. Such a body, composed at once of persons most likely to know the truth of the rumors, and most interested in maintaining the Bishop in good report without and within, was entitled to the greatest weight. The thought to investigate would only multiply food for the tongue of slander; they, therefore, refused it. Yet, strange to say, the reports were doubled, not diminished.

At the Convention of 1850 some evil-disposed persons, suspecting the Bishop of having laid illegal hands on the coffers of the Church, again sought to disturb the peace of the Diocese by a motion for inquiry. But that eminently docile and peaceful body abruptly adjourned, to save the Church the scandal of seeming to countenance so monstrous a proceeding by even considering the proposition. It is presumed the Bishop was as much surprised and bewildered as the rest of the world at this sudden adjournment.

There is not the slightest ground for supposing the Bishop to have been at all instrumental in evading this investigation. He had nothing to fear from it. "He had," he said, "found the episcopal fund in one part of God's vineyard. He had transplanted it into another part of God's vineyard. That was all!" On this transaction he had nothing to fear from the investigation of a body which did not think it worth investigating.

The Convention of 1851 inherited the meek and faithful spirit of their predecessor; and, confirmed by their example, they were enabled to rise to the height of the case they were called to deal with.

In the fall of 1850 the rector of St. Michael's church had published, with the consent and concurrence of his vestry, several of the grossest charges urged against the Bishop.

Michael Hayes, a creditor of the Bishop, had so far forgotten what was due to a consecrated Bishop as to make a solemn affidavit, wherein he called God to witness that His servant had cheated him feloniously out of some ten thousand dollars by false representations. Mr. Halsted stood prepared to bring this impious document before

the Convention; and the pamphlet of the Rector of St. Michael's would certainly have followed it.

Yet, though all this was known, the Convention did not rush on and stone the rector and the lay member charged with these offensive topics. They only *shut their ears to them*. On the *first* day of the session, after *Mr. Halsted* had retired for the day, they suddenly adjourned, leaving much important business unattended to.

The delicacy of this proceeding is its most attractive feature.

The charge of Michael Hayes was supported by his oath; but that was only the oath of a layman accusing a Bishop of a felony. It was plain such a charge must fail on such evidence—for how could a layman's oath outweigh the consecration vow of a Bishop? An oath prove a fact against a vow not to do it! It impeached the sufficiency of the grace of God promised to His apostles and their successors to the end of the world. It was vastly more probable that God should keep His word than that a layman should lie. The Convention, therefore, considerately spare Michael Hayes the exposure which the hearing of his affidavit would have occasioned.

They behaved even with more forbearance towards Mr. Starr, of St. Michaels. They did not even put him on his trial for slandering his Bishop, whom he had vowed reverently to obey.

They allowed him and Michael Hayes to go their ways in peace!!

The Bishop bore his trials with christian meekness and resignation—confident in the protection of God—and his Convention.

Such turning of the other cheek to the smiter ought surely to have disarmed the most rancorous malignity. It had no other effect on the obdurate laymen than to convince them that the Bishop, strong in the affectionate and obsequious devotion of his Convention, could be effectually assailed only from without. They found that *children* would not try their *father*. They hoped to find *brotherly* affection less inexorable.

They turned from the diocese of New Jersey to the three Bishops of Virginia, Ohio and Maine. They invoked the canon of 1844 entitled "*Of the trial of a Bishop.*"

In an evil hour you, Right Rev. Fathers, consented to that canon: It is the most serious blow ever dealt against the independence and irresponsibility of your order. It admits that you are not infallible either in morals or in faith. It implies that you are not each the absolute and ultimate judge of the rectitude of your own act. It impeaches the heavenly origin of your prerogatives. It creates presumptuous thoughts in the hearts of the laity. It weakens your hold on their submission, by teaching them to contemplate the possi-

bility of your erring, and by tempting them into the dangerous heresy of judging you by the only rule known to them—the rule of morals imbibed loosely by the unlearned laity from their too exclusive study of the Bible. With this canon and the right of free investigation—who can wonder at the untold evils the Church and the Holy Order has suffered by the trial and degradation of the Bishops of New-York and Pennsylvania, and the deplorable proceedings against Bishop Doane. On this subject we are not left to our unaided reason, we have the testimony of one who knows from his own experience what it is to sin and conceal it, and what it is to sin and be exposed. He has feelingly declared, touching the trial of Bishop Onderdonk :

“I most solemnly believe that greater evils have arisen from that trial than could have come if the offences charged upon the Bishop of New-York—had all *been true*.”

And again, in contrasting the Protestant with the Papal Church, he exclaims: “Now who has ever heard of the trial of a Romish Bishop? When one of the clergy of that Church falls into *open* and *notorious* sin, he is sent off in silence and solitude and sorrow, and the Church and the world are spared the *scandal* of his *offences* and the GREATER SCANDAL OF HIS TRIAL.”

You Right Reverend Fathers only can appreciate the merit of this scale of morals—so adverse to the rude conceptions of the world—but drawing its origin from a classic era far beyond the Apostolic times. Your classic learning will instantly suggest the Spartan code—which made theft a virtue while concealed, a crime when discovered!! It is clear that though crime be bad, yet trial is worse, and confession worst of all; for the trial only exposes what never can be proved by any human evidence against a Bishop: and confession, in admitting what never could have been proved, tends directly to cast suspicion on the innocence of all Bishops. It gives the profane occasion to say, Oh! if we could only *know* the truth, *half* of them are no better than they should be.

The author of that sound exposition of the evils of the Canon is well supported by the earliest history of the Christian church. I need only refer to the notorious case of Callistus, a Bishop of Rome, who from having been guilty of theft, embezzlement, and falsehood, was finally elected Bishop, and then proclaimed, with a keen sense of its necessity, that great principle, that “if a Bishop commit sin, be it even a sin unto death, he must not be deposed for all that.”

Such was the spirit of Primitive Christianity in the Second Century! So entirely is the Bishop of New Jersey *superantiquas vias!!*

To this Canon then, the source of so many evils, did those laymen appeal for the persecution of their Bishop.

The Three Bishops forwarded to the Bishop of New Jersey the charges preferred by the Four Laymen, and gave him an opportunity to explain and expose them.

That noble Prelate repelled, with the spirit of a Hildebrand, that invasion of his episcopal prerogatives. He denounced anathemas upon the "uncanonical, unchristian, and inhuman procedure," in language which in the mouth of any but a Christian Bishop would have been an explosion of blasphemous fury, but in him was only that Godly wrath which caused Moses to break the tables of stone at the idolatry of Israel.

Having thus delivered the three Bishops to a tribunal they were not likely to escape, the Bishop of New Jersey summoned his Convention specially "to consider and express their judgment on the official conduct of the Bishops of Virginia, Ohio and Maine, as touching the rights of the Bishop and the Diocese, in dictating a course to be pursued by them." The Bishop of New Jersey was even then alive to the evils of trying a Bishop, and manifestly resolved to "do what in him lay to make the trial of a Bishop hard."

This Special Convention shared and echoed the indignation of their Bishop at the invasion of their rights, and roughly repelled the three intruders from the Diocese.

With that stern hostility the Bishop had always shown to Papal pretensions, the Convention united with him, repelling the intrusion into the fold which he "received from Jesus Christ" of the Triumviral Papacy of Virginia, Ohio and Maine, and in view of the unanimous vote of 1849, and all which had subsequently occurred touching these Bishops, they reiterated the declaration of their "entire confidence in his *purity* and *uprightness*," and resolved that "no investigation was needed."

Of the wisdom of this resolution no reasonable doubt can be entertained. The only allowable purpose of inquiry into episcopal conduct is to exculpate; and here the investigation was more likely to shake than to confirm in the minds of others that confidence in the purity and uprightness of the Bishop which the Convention were so fortunate as to feel.

It is strange so simple a view of the matter did not strike and convince the three Bishops. Far from acting on these church principles, they seem to have been led astray by the idea that Bishops were to be judged as other men, were equally liable to error and crime, and that their acts were to be estimated by the ordinary rules

of morality prevailing among men. The Canon of 1844 certainly seems to countenance this view, and probably had no small share in their aberration. Yet it is probable the reason is of a more recondite character, and one calculated to shake our confidence in the legitimacy of their episcopal pretensions. It is scarcely conceivable that genuine successors of the Apostles—on whom the ineffable graces must have descended, and with whom God has promised to be to the end of the world to preserve them from material error—could have been guilty of a misconception of the episcopal character and prerogatives so fundamental, so vital, as to suppose them amenable to the rules of worldly morality, or liable to rebuke or deposition by their equals. I know of no way of explaining this curious fact consistently with the infallibility of Bishops, except by supposing that the line of consecration through which they claim descent has at some point been broken. Grave doubts it is known were entertained as to the full efficacy of the episcopal transmission of Apostolic grace from the Papal to the English church; and a more recent and more fatal defect may have intercepted totally the flow of Apostolic grace and unction to the heads of the three Bishops. Such a supposition is worthy of the gravest consideration. It not only relieves those excellent but erring *men* from the gross charge of violating their episcopal duty, but it at once relieves us from all doubts as to the efficacy of that grace, when duly received, to preserve the recipient from error. It enables us also at once to dispose of, on satisfactory principle, the otherwise painful and inexplicable phenomenon of the low church heresy, which has infected some who are commonly supposed to be Bishops.

These three Bishops having drawn up a formidable Presentment in twenty seven specifications—containing grave charges of crime and immorality, according to the prevailing notions of the world—laid them before the Senior Bishop. This Prelate, supposing the Canon was obligatory, and the accused liable to trial, appointed the trial for the 24th of June, 1852, at Camden.

On the 17th of May the same Bishop gave notice to the several Bishops, that “By request of a *number of Bishops*,” and “also of the *Counsel of the Right Rev. G. W. Doane*,” he postponed the trial till the 7th of October.

Even this letter is luminous with the peculiar morality I have been endeavoring to explain. It affords us a pleasing occasion to exemplify our faith in episcopal plain dealing, in the face of the most depressing improbabilities. It will again attract our attention.

This postponement was clearly not authorised by the Canon,

which gave the Senior Bishop no power over the Court after the time and place of assembling had been appointed.

The Court failed to meet on the 24th of June; it could not therefore meet at all for the trial of the first presentment. Its proceedings would have been in the language of the Bishop of Maryland "irregular, null, void, and of no consequence." It would have been a defect of jurisdiction which *no consent* can cure, as every *lawyer* knows.

The Three Presenters were advised of the difficulty, and instead of seizing the opportunity of withdrawing from the contest, renewed the Presentment, with additional charges.

On this Presentment the Senior Bishop summoned the Court for its trial on the 7th of October, the day to which he had assumed the right of previously adjourning the former Court.

The Bishop of New Jersey met the Court and the accusers on the appointed day—the latter with bold defiance—the former with easy and familiar cordiality.

"Given to hospitality," according to the apostolic injunction, he tendered his judges the hospitalities of Burlington. The *law* would have called this by the rude name of "embracery" if tendered to a jury; but the bond of episcopal brotherhood is so strong that such an innocent act could add nothing to their inclination to acquit him. It is therefore beyond the reason which in civil matters would cause it to be reprobated.

Many of you, Right Rev. Fathers, took this view of it, and innocently accepted the innocent hospitality—as Lord Bacon accepted bribes—to do right. It is well known that his opinion was never influenced by those testimonials of regard from the suitors of his Court, which have been so uncharitably misconstrued.

At Burlington the Presenters declared themselves ready to proceed to the trial—the Bishop of New Jersey, that he was ready to hear the Presentment.

It was accordingly read. Then followed one of those steps which is most difficult to be comprehended by jurists of the civil law, but which the slightest knowledge of the principles and purposes of ecclesiastical procedure renders intelligible.

A communication from a committee of the Convention of New Jersey had been laid on the table of the Court, concluding with the emphatic declaration—

"The Convention of New Jersey asks to be heard."

The Convention of New Jersey was not on trial; the Canon seems to be silent as to any one's being heard but the accusers and the accused; yet the Bishop of Indiana moved that the committee be admitted.

Here there are two notable departures from the ordinary course of judicial proceedings. A body not a party to the proceedings is allowed to be heard : and the motion is made not by any *party* to the suit, but by a member of the Court. The invariable rule in civil proceedings is, that none but parties can be heard, and none but parties can make motions ; and that the Court is absolutely passive, and does nothing but at the instance of the parties.

The cause of this difference is, that in civil tribunals the purpose is to administer justice without fear, favor, or affection, *according to law*.

In ecclesiastical tribunals the purpose is to save the Church, already scandalized by the crimes of a Bishop, the “greater scandal of a trial.” The Bishops are responsible for the reputation of the Church ; they must, therefore, have the right of initiating motions to prevent imprudent exposures. The Committee of New Jersey came to assure the Court of the innocence of the Bishop, and thus to exempt the Court from the necessity of investigating that point for themselves.

It is plain, therefore, that the admission of the committee was essential to the attainment of the objects of the Court. They were, therefore, admitted.

They were admitted on the motion of a member of the Court—because in that mode only could the Bishop of New Jersey be kept free from implication with them. He might have been charged by a malicious world with shrinking from an investigation of his conduct. Indeed suggestions to that effect had already been made. But he could not be supposed to influence his Convention in the assertion of the right to have their Bishop unmolested by trial. Accordingly Bishop Doane, during the whole progress of the Court at Burlington, does not appear on the record ever to have made any motion on his own behalf. His Convention, with disinterested affection, step in to defend him as his *next friend* : and he in their absence reciprocated their devotion, and defended them as their *next friend*. It was a friendly proceeding throughout. The Diocese of New Jersey was never for a moment subjected to the scandal and mortification of seeing its Bishop standing before the bar of his Peers in the anomalous character of one accused of crimes and immoralities.

A difficulty still remains—the Canon of 1844 did not provide for this intervention.

So imperfect are its provisions that, if strictly followed, the trial of a Bishop once presented is absolutely inevitable. Its provisions seem drawn with that express view. Its authors seem never to have contemplated any other method of disposing of a presentment than

by the scandal of a trial. They seem entirely to have forgotten the rights and interest of a Diocese in its Bishop. And but for the fertile principle of the inherent original and universal jurisdiction of Bishops, great evils must have followed on this presentment. The Church must have had another living scandal, of an unlearned Bishop added to the painful cases of New-York and Pennsylvania. Thanks however to that deep fountain of power, and to the courage of those who did not fear to draw from it, that danger was evaded.

A brief exposition of the Canon, on principles of human reason, will illustrate and vindicate the necessity of resorting to the original, but long dormant, sovereign prerogative of the Bishops.

The 2nd Section of the Canon, after describing two modes of making the presentment, declares that

“Upon a presentment made in either of the modes pointed out in Section I. of this Canon, the course of proceeding *shall be as follows:*”

Then what follows?—Why nothing but these steps.

1. The presiding Bishop shall cause a copy of the presentment to be served on the accused.

2. He shall give notice to the Bishops to meet at a time and place designated—any seven of whom are declared a Court—“*for the trial of the accused.*”

3. He is to give 30 days notice to the presenters and the accused.

4. He is to call on the accused by a written summons to appear and answer.

5. If the accused appear, the Court before proceeding to trial is to call on him to say, whether he be guilty or not guilty.

6. If he neglect or refuse to plead, the Court shall enter the plea of not guilty, and *the trial shall proceed.*

Now in this case a presentment had been made; and *upon it* the Canon set down each step of the proceeding. The Bishops were then to be summoned: and they had been. Any seven meeting were to be a Court for the trial of the accused; and fourteen Bishops had assembled: they therefore were a Court for *the trial of the Bishop*, and for nothing else. The notices to the presenters and the accused had been given; and both were present in Court. Having then met—according to the Canon for the trial of the accused, and for nothing else; and having no other power given to them, the Court had nothing to do, according to the Canon, but to require the party to plead guilty

or not guilty. But here the Court stopped—for to plead was useless, except with a view to a trial.

It is therefore clear, Right Rev. Fathers, that had you followed the Canon you would have been driven to a trial of the Bishop of New Jersey. It was a clear case of gross carelessness to draw a Canon so strictly that it could not be followed without entailing on the Church greater evils, by following, than by disregarding it. If ever there was a case where the original power of the Bishops might be invoked, this was the case. You resolved to do your duty to your Brother—in spite of the law. Instead of calling on the Bishop *to answer*, you resolved to admit the Convention of New Jersey, to produce their proceedings for the “*purgation*” of their Bishop.

Those proceedings were justly entitled to your gravest consideration.

They consisted of an elaborate investigation, instituted *for the establishment of the purity and uprightness of the Bishop*—corroborated by a powerful appeal to the most profound principles of the ecclesiastical law.

Those proceedings showed—to the confusion of the Presenters—that

“The Convention of the Diocese, the grand inquest of the Church therein,” had “passed upon these charges: and in the fear of God, and true allegiance to His Church, declared there was no ground for a presentment.”

The Convention began the investigation with such confidence in the integrity of the Bishop, as to have justified them in refusing it.

They examined all the witnesses *in his favor*; and so deep and abiding was the case they made out, that they did not think it worth while to examine those relied on against him.

On the strength of *this* investigation, the Convention resolved,

“That the result of the investigation, and the evidence now laid before the Convention, *renew* and *strengthen* the confidence heretofore expressed in the integrity of the Bishop of this Diocese, and *in our opinion*, fully exculpate him from any charges of crime or immorality made against him.”

It was this *opinion* of his integrity, and this *evidence* in support of *that opinion* that the committee were instructed to lay before the Court, accompanied by a written representation of the “legal and canonical rights” of the Convention, and an earnest request to consider whether it were “wise or just, or for the peace of God’s Church, to proceed further upon the charges laid before them.”

The committee was resplendent in judicial, legal, clerical and lay dignity and ability.

Their "written representation" enforced the moral and legal weight and efficacy of the opinion and evidence of the Convention, with great originality of argument and boldness of view. A brief statement of its most striking points will be the best vindication of the judgment you based on it.

They said—

"The law has clothed us with the *right* of presentment, and entrusted us with the *duty* of performing it. We have exercised this right, and we have *performed* the *duty*," *i. e.* by *not* presenting.

"In our judgment, it is the obvious intention of the Canon to make the Convention the leading and controlling Presenting Power. For weighty reasons, the Diocese is placed between its Bishop and the bar of this Court. *The way to the trial is through the Convention.* True, there is another path *to this Court* pointed out in the Canon, designed, *it may be*, for cases of heresy; but it is on all sides confessed that it should only be taken from necessity. The plainly marked cause pointed out by the law, most clearly indicate which of these two ways of trial should have the preference in the first instance."

This bold committee, by this assertion of the *prior right* of the Convention to present, strike out *all right* in the three Bishops, and thus at once make an end of the case. For if the Convention have the *prior right*, the three Bishops can never present before the Convention have *acted*. But if they act, they must either present or refuse to present—which the committee had already demonstrated to be the same thing. If the Convention *present*, that excludes the three Bishops by the rule that the one of two concurrent powers first *presenting*, excludes the other. If they *refuse* to present, then the three Bishops are equally precluded by that very refusal. It was just such a *refusal* which the Convention were pressing as a bar to the proceedings of the Court. Even if the Convention had done nothing, yet their *prior right* would prevent the three Bishops doing *anything* before the Convention had done *something*.

Thus successfully did the logic of the Committee destroy the right of the three Bishops, on which the whole proceeding rested. So impossible is it for the plainest words to escape the penetrating researches of ecclesiastical jurists.

Confident in the stability of that argument, they lightly pass over the suggestion that the *prior presentment* of the three Bishops excluded them: for they had demonstrated its irregularity whether before or after their proceeding.

They follow up this reasoning by a novel and powerful application of an undoubted and universal principle of jurisprudence.

They say :

“ We believe that presentments and indictments are intended for the *guilty* and *not for the innocent.*”

How striking ! How new ! How conclusive ! Who ever heard of any law intended for the indictment of an innocent man ? The history of no jurisprudence presents such an anomaly. Indictments and presentments under this Canon must have been intended for the guilty only. In order therefore to ascertain whether the presentment lay *in this case against Bishop Doane*, it was plainly necessary for the Court, before proceeding to *try* him, to satisfy themselves of *his guilt*: for if he were *innocent*, then clearly the Canon did not subject him to presentment or trial.

The Convention had thus providently anticipated the difficulty of the Court, which might have been puzzled how to find out his guilt or innocence without a trial, on which however the right to try him rested. The Convention did not *try* him, but they *investigated* his innocence, and then hastened to the bar of the Court, with the results of the investigation, to assure the Court that their Bishop was an innocent, not a guilty man—therefore not the subject of a presentment or of a trial.

Thus the Convention interposed their *opinion* of his innocence, and their *belief* of the truth of the evidence taken before them, to satisfy the Court of Bishops of the purity of *their* Bishop. That object once attained, a trial become not merely a scandal, worse than the crime, but an iniquity without a shadow of excuse.

The moral weight of this investigation was entitled to great respect.

It was undertaken with the purest desire to find the Bishop innocent. It was decided by a Convention already convinced of his “purity and uprightness.” It was conducted by a Committee of the mystical number of seven—a *majority* of whom were creditors of the Bishop or trustees of his institutions, or both creditors and trustees at once, *all of whom* were his personal and devoted friends, and the *Chairman* of whom was already implicated in the Bishops connexion with the episcopal fund. It was conducted quietly, coolly away from the bustle and heat of a contested cause, in the presence of the accused, and in the absence of the accusers, whose presence would only have obscured and complicated the beautiful simplicity of the result. The witnesses, by their absence, were freed from the terrors of cross-examination—so fatal to clearness, fullness and fairness of statement. So studiously was their absence contrived, that the notice of investigation was not sent to them, but to certain lay gentlemen of New Jersey, not entitled at all to represent them. With such skill

were the examinations conducted, that throughout that cloud of witnesses, so uniform is the tone and so consistent the coloring of every transaction, that the unity of truth is hardly diversified by those circumstantial variations in the midst of substantial agreement which Paley pronounces the characteristic of *honest* human testimony.

This proceeding ought surely to have satisfied the most skeptical of the innocence of the Bishop. It was the precise course pursued under the Canon law in England when a clergyman was *convicted* by the civil tribunals, for the purpose of establishing his *innocence*; and if there it was considered to outweigh the actual verdict of twelve laymen, surely here it should put to shame an accusation resting only on the irresponsible oaths of four.

It is somewhat remarkable that the learned jurists who prepared the "written representation" of the canonical rights of the Convention, should not have furnished the Court with the pertinent passages which abound in the venerable masters of the old law, touching this process for *clerical purgation*.

I may be permitted to supply that omission, while I support by a strong precedent the judgment of the Court. Thus says a venerable legal author:—

"The real clergy were discharged from the sentence of the law in the King's Court, and delivered over to the ordinary, to be dealt with according to the *ecclesiastical canons*.

"Whereupon the ordinary, not satisfied with the proofs adduced in the profane secular Court, set himself formally to work to make a *purgation of the offender* by a *new canonical trial*; although he had been personally convicted by his country, or perhaps by *his own confession*. This trial was held before the Bishop in person, or his deputy, and by a jury of twelve clerks; and there first the party himself was required to make oath of his own innocence; next, there was to be the oath of twelve *compurgators*, who swore they believed he spoke the *truth*; then, witnesses were to be examined on oath, *but on behalf of the prisoner only*; and lastly, the jury were to bring in their verdict on oath, which *usually acquitted the prisoner*; otherwise, if a clerk, he was degraded or put to penance. A learned judge in the beginning of the last century remarks, with much indignation, the vast complication of perjury and subornation of perjury *in this solemn farce of a mock trial*; the witnesses, the compurgators, and the jury, being all of them partakers in the guilt; the delinquent party also, though convicted before on the clearest evidence, and conscious of his own offence, yet was permitted and almost compelled to swear himself not guilty; nor was the good *bishop himself* under whose coun-

tenance this scene of wickedness was daily transacted, by any means exempt from a share of it. *And yet by this purgation the party was restored to his liberty, his lands, and his capacity of purchasing afresh, was entirely made a new and innocent man!!*"

Another venerable judge, speaking of the statute of Elizabeth, which "for avoiding *sundry perjuries and other abuses in and about clerks convict,*" abolished these "purgations," says:

"The perjuries were indeed *sundry*; one in the *witnesses and compurgators*, another in the jury composed of *clerks and laymen*, and of the third, the judge himself was not clear, all turning the *solemn trial of truth by oath into a ceremonious oath and formal lie.*"

You, Right Rev. Fathers, will pardon my quoting the language of these venerable but irreverent men for the sake of their solemn attestation of the rule of the Canon law. You will not accuse me of adopting the language I quote. Our judges are too apt to catch a bad habit of calling things by ugly names, from their constant familiarity with the hard language of the law. We can only apologise for them as Philip did to the Athenian ambassador who complained that his soldiers called them *traitors*, only because they had received *money from him*—Ah! these Macedonians of mine are very plain men—they *will call a spade a spade!!*

I quote this precedent to show how entirely the Convention were within the line of ancient precedents; and to illustrate how the whole clerical order is penetrated by the same spirit which spontaneously suggests similar means for the attainment of similar ends from age to age.

Here, though the Bishop was the party to be purged, he presided or sat in the Convention which resolved his innocence. He was not, it is true, required to *swear* to his innocence, but it is presumed no difficulty would have been felt, "under legal advice;" and its place in the proceeding was supplied by his reiterated asseverations. The rule that witnesses were to be examined only in favor of the accused was rigidly adhered to, and most of them performed the double duty of witnesses and compurgators, attesting—not facts, but—their *belief in the Bishop's assertion of his innocence*. The committee was composed like the jury, of clerks and laymen, following the scriptural number of seven rather than twelve; and the proceeding had the *usual* result of a *purgation*, in a "*verdict of acquittal.*"

To the arguments of the Committee the presenting Bishops could oppose nothing—but the express words of the Canon giving them a co-equal right to present with the Convention—they relied with great but futile confidence on the analogies of the Civil Law to show that

the Convention was merely an inquest or grand jury, whose refusal to put the Bishop on trial bound no one—not even themselves—that the investigation had no quality of a trial in Law, and was worth little as an impartial search for truth in morals,—and that the Convention, not having two thirds of both orders, was by the words of the Canon and the principles of Civil Law not even competent to consider the question of presentment—but that every thing it did was by a body having no *jurisdiction*, and so “null and void, and of no consequence.”

But all these arguments were on the supposition that the Court of Bishops were *bound by the words of the Canon*, and had no *paramount power independently of its provision*; and that a Court of Bishops is bound by the ordinary rules of legal procedure and analogy.

The Bishop put these things in a strong light in his reply as “*next friend*” of the Convention. He spoke under a deep sense of his obligation to defend a body which had so vigorously defended him: and he reveals a curious scale of christian morals when he says,

“I am bound by the *most sacred duty* to stand by the Convention

“*I should be guilty, if I did not—of a blacker crime than I am yet accused of.*” How mysterious must be the relation between the Bishop and the Diocese—that spiritual marriage—to be faithless to which is worse than cheating, drunkenness, and perjury!

Under *this* solemn responsibility he assails the argument of the Presenters with spiritual weapons, which derive much importance from their apparent adoption by the Court. He stood—not as a criminal before his judges—but the defender of his absent defenders from the calumnies and malice of their common foe. He spoke as one having authority, and not as the scribes, on whom the Presenters depended. He *drew* his resource directly from *inspiration*—and set himself and the Court clear from all responsibility to human reason.

“I pass to the legal argument It lives on analogies. It has no other hold upon the case. Now analogies are good for illustration: *may be taken in to help out an unuttered thought* (qu. the priority of the Convention?) They are, like the Court, *of counsel always for the defendant*. But after all—there are *no analogies*, there *can be no analogies* between this Court and any Court whatever called, of civil or of criminal jurisdiction. Where is the other Court *whose judges hold from Jesus Christ?*—Where is the other Court whose judges administer judgment *only as an incident to their great work as rulers?* Where is the other Court in which the *legislative and*

executive combine with the judicial? It is an element of our republican institutions that these three must not be united in one person. You dare not throw yourself on this construction of your office. It would be *treason to your trust*. You would be *traitors to your Lord*. *You stand alone*. There can be no analogies to reach your case."

This at once and for ever puts an end to the flimsy attempt of the Presenters to restrain the powers of the Bishops by any rules of juridicial proceeding.

Once emancipated from analogy, he expatiates on the inherent rights of *this Court*.

"Was there ever a Court for the trial of offences heard of upon earth that had no *prerogative of interposition* . . . that could not dismiss an accusation? . . . And can a Court of Christ's Church be defective in a power so obviously inherent in the very nature of a Court? Can a *Court of Bishops with their powers and rights above all Canons and beyond them, be without it?* A Court of Bishops, most especially, from which there is provided no appeal whatever? And this most *sovereign power*, and this most sacred right, be lost to such a *Court by mere omission*—in a Canon which *gives them no authority whatever*, and claims but to direct them!!"—

This argument surely leaves little to be said in reply. Hit pro *ratione voluntas!!*

Under its influence, you took into your consideration the judgment to be given.

The Bishop of Indiana—renewing the order proposed by the Bishop of Michigan, moved that

Whereas previous to the making of the presentment now before this Court, the Convention of New Jersey had investigated most of the matters contained therein, and had determined that there was no ground for presentment, therefore

Resolved, that as to the matters thus acted upon by said Convention, this Court is not called upon to proceed further:

Whereas the Diocese of New Jersey stands pledged to investigate any charges against its Bishop that may be presented from any responsible source, and whereas a special Convention has been called shortly to meet in reference to the new matters contained in the presentment now before this Court; therefore

Resolved that this Court, relying on the said pledge, do not now proceed to any further action in the premises.

The order is awkwardly worded. It should have been—

Whereas the Bishop of New Jersey has caused purgation to be made as to most of the charges in the presentment, and has promised

to have like purgation made as to the residue thereof.—Upon consideration thereof and that thereby the said Bishop is innocent of said charges—and that presentments are for the guilty only—

It is ordered that he go without day.

The order had been moved by the Bishop of Michigan, but withdrawn, *because* it was based on the postponement and consequent failure of the Court first summoned, which he was instrumental in procuring.

The withdrawal indicates a lurking consciousness of something wrong.

On the refusal of the Bishops at New York to ask a postponement for the convenience of the delegates to England, Bishop Me Coskry visited the presiding Bishop, and in consequence of what there passed the postponement was ordered.

The Bishop of Michigan reduces his share in the transaction to a very small one.

He states his whole agency.

“This was simply to present the letter addressed to me by the counsel of Bishop Doane to the presiding Bishop. The whole matter was left to his discretion. *In the application made by the counsel*, there was a distinct and positive declaration made, that whatever doubt might exist as to the power of the Presiding Bishop, no advantage would be taken by him or Bishop Doane.”

Yet the Presiding Bishop orders the postponement

“By request of a Number of Bishops, &c. and also of the Counsel of the Right Reverend G. W. Doane.”

The discrepancy between the application and the grant is certainly singular. We must all admire the extreme delicacy of the Bishop of Michigan, who for so small and innocent a share in the postponement, shrinks from moving to take advantage of it; but his voting for the motion perplexes us by the refined discrimination it implies between moving and voting for a motion. But the difficulty arises from looking at the transaction from the point of view of vulgar morality. Regarded from the episcopal point, and read by the analogy of the dealing with Mr. Binney's name after his refusal to give it, by Bishop Doane—which has since received the sanction of your Right Rev. Bench—the difficulty vanishes. It is not irreverent to suggest that the Bishop of Michigan hinting at the anxiety of the Bishops to be represented in England, as attested by his appointment, and using the episcopal “we” to communicate his own application for a postponement, left the senior Bishop to apply it to as many of the Bishops in New-York as he might think it covered.

The letter of Mr. Wharton, pledging himself and the Bishop of

New Jersey not to take advantage of any postponement, is unfortunately to be judged not by the morals of Bishops, but by the more rigid code of the bar.

That pledge was a *trap*, unless it mean that no advantage will be taken of any step requisite to avoid the error of the postponement. In that sense Mr. Wharton undoubtedly meant it.

The *postponement* put an end to the Court. Your Right Rev. Fathers have solemnly resolved, and that unanimously, that at your meeting in October, at the time the postponement appointed, you could not take cognizance of the first presentment. The postponement had destroyed the Court, and any meeting under that postponement would have been a body without jurisdiction. Consent cannot confer it, nor in any manner remove the defect. There was, therefore, no possible method of getting a trial on the first presentment.

The only possible method was the one adopted—to prepare a new presentment, and have a new Court summoned.

This the Presenters did ; and Bishop Doane availed himself of this delay to cause the purgation, which the order recites, to be made, and by which the presentment was defeated.

Bishop Doane, under the relaxed rules of episcopal morals, may be allowed to say that the one or two additional specifications relieved him from his pledge. But Mr. Wharton, whose exquisite delicacy of moral and theological feeling pervaded his social and professional relations throughout the trial, would scarcely venture to face his brethren with such a suggestion. Yet he remained the counsel of Bishop Doane to the last.

Did the Bishop act in this matter, as in the affidavit, “under legal advice?”

The order was adopted, by a vote of eight to six, affirming the validity of the purgation.

It is unfortunate, Right Rev. Fathers, that the value of so important a decision should be lessened by the multiplicity of reasons assigned for it.

Had it been put on the simple ground of an ecclesiastical purgation, it would have been intelligible.

Had no reasons been assigned, the decision (being right under the Canon law,) could have been fully defended as ecclesiastical purgation.

But the extreme exuberance of the argument and observations with which you have crowded your opinions, obscures the simple beauty of the decision, and leaves open too much room to doubtful disputation, as its real grounds.

It is clear, however, that the majority of the Court agreed with the Bishop of New Jersey in the paramount and discretionary nature of your powers—that you represent the blended and inseparable functions of the legislative executive and judicial powers—that you hold them from Jesus Christ—that the Canon gave you nothing, and can restrain you in nothing; that it merely prescribes a rule for convenience which, when inconvenient, you can disregard—that possessed of all power, you are troubled by “no mere omission,” but can help it out by an unuttered thought; and when the Canon ordered a plea and a trial, you could rightfully order no plea and no trial.

Thus viewed, this decision is a glorious vindication of the episcopal theory, by an authentic judgment. It put an end to the controversy which so long has agitated the Church. If this proceeding was inspired by the spirit of that controversy, the blow has recoiled on the assailants. It is the Waterloo of the war of the high and of the low church; and your recent decision indicates, by its unanimity, the removal of that scandal which so long has exhibited you as a divided Church.

Every judgment, Right Rev. Fathers, involves the assertion of every power requisite to pass it legally. Yours is the judgment of the highest Court of last resort in the Church. From it there is no appeal. It is competent for no one to explain your judgment as an intentional usurpation. It must be taken as your assertion of the measure of your powers.

It is either a wanton outrage, or it is a judicial act. If the latter, it means that you claim and assert the right to pass that judgment and every other judgment within the reason of it.

This judgment then, pushed to its principles, places your order, Right Rev. Fathers, on a ground it has never before occupied openly in this country, and beyond the reach of lay control.

It asserts the inherent rights of episcopal prerogative, derived from the apostles by descent, not from the people by gift.

It asserts the union in the Bishops, of all legislative, executive and judicial power over the Church.

It repudiates the constitutions and Canons of our American Church as either sources or limitations of their authority.

It asserts your right to act at your own discretion in the silence of the Canon on a mere omission; as for instance, in allowing the Diocese of New Jersey to interpose its purgation in lieu of a plea of guilty or not guilty; and your equally absolute discretion to act in the face of the express words of the Canon; as for instance, where it declared that on a presentment the proceedings “shall be as fol-

lows," you did not take those proceedings, but others which did not "follow."

It asserts the absolute right of a Diocese to prohibit at its will and pleasure, by refusal to present, or by failure to present, any trial of its Bishop—thus annulling the Canon which said he might be tried.

It asserts, in other words, the plain principle, that our Bishops derive no powers from the constitution and Canons—are not bound to stop where they are silent, to do what they command, to refrain from what they forbid. But,

That they derive their whole authority from the apostles by succession, which being original, cannot be given them; and being from God, cannot be limited by men; and being for the good of the Church, are to be exercised at their discretion;—and that Canons and constitutions are merely methods for procuring conformity of action, preventing collisions of jurisdiction, and securing concert in its exercise. That their language, however imperative, is never obligatory; and that when disregarded or violated, it is merely the change of will of one whose will is the life of the law.

The judgment implies all this. You, Right Rev. Fathers, while driven to do this great act of discipline, were yet quite too prudent to venture on the assertion in plain terms of the powers which you exercised.

You knew too well the suspicion entertained by our people of any authority above their control. They think it savors of despotism. They do not see so clearly as you do the restraining influence of the apostolic grace; and feeling that it is unlimited in its nature, they fear it may become despotic, and must always be arbitrary in its exercise. Our republican habits have poisoned our minds against such irresponsible power, though it be from so sacred a source as the apostolic succession. We are impatient of any control, however salutary, which we cannot ourselves control. We love to feel ourselves the fountain of power, and we submit to authority chiefly because we are flattered by the idea that it is self-control. You know full well the struggle to limit the episcopal power at its introduction into this Church, and with how many scruples it was in many places accepted; and you know that it is only by careful and prudent management that the confidence of the people has been conciliated and their fears put to sleep. You have always allowed them to delude themselves with the supposition that if you did not draw all your power from them, yet you did draw some of it; that you could be controlled by laws, and that there were limits to your authority. You have concurred in making constitutions and Canons which give,

take away, regulate and modify, all your functions. These Canons always speak in the name of laity and clergy—in the language of law and command—enacting obedience, and punishing by courts and penalties even the highest head which disobeys them. You have always been careful to *seem* to submit to these laws; to act in conformity with them. You have even countenanced the idea of your authority being limited by applying for Canons to authorize acts of clerical discipline, and the performance of spiritual functions.

In this method the vigilance and suspicion of the people have been made to slumber; their confidence has been won, so that now you have ventured to do what before it would have been dangerous to do. Not dangerous to your legitimate authority—for that is from the apostles, and survives every outrage which limits it, by rebellion—but dangerous to that quiet submission to your authority which is essential to the production of all its fruits. You have, with Christian prudence, refrained from rousing or offending the stubborn heart of republican pride, so long as you could manage to attain your ends by soothing its irritability and allaying its fears.

So successful has this course of treatment, under Providence, been, that now you can venture to *act on* the assumption of your actual inherent, original and absolute prerogatives, without law, and in violation of law, according to your own good pleasure.

Still you have not felt quite secure of the entire acceptance of your views of your authority by the people of this country. You thought they might acquiesce in your *acts*, provided they were not startled by *assertions* of power and principles which might cause anxiety for the future.

You have, therefore, carefully abstained from tracing the real principle on which your judgment was founded, and have not pushed the rights that principle involves to its ultimate consequences. You have been careful and eminently successful in covering up, amid a cloud of irrelevant suggestions, inconclusive arguments, unsolved doubts, small irregularities, vague phrases touching ancient Canons, and the higher law of Christian charity—the great principle of your sovereign, absolute, inherent and uncontrollable power.

Some of you have been less fortunate in concealing this esoteric doctrine of your order than others.

The opinions of those eminently orthodox churchmen, the Bishop of Maryland and the Bishop of Western New-York, are models of composition, successfully defying detection of the great principal they involve, by the cloudy generality of vague and unsubstantial doubts which float round the latter, and the profuse and bewildering “considerings” which conceal the pathway of the former.

On the other hand, the opinion of the Bishops of Indiana and of New Hampshire verge on the very limits of dangerous and indiscreet candor; and but for the multitude of supplemental considerations which they embody, as allies, to cover the too great exposure of their central principles, would almost be fit subjects of friendly remonstrance, on behalf of their brethren, from their needlessly jeoparding the interests of the order.

I may be permitted to point out to your eye only, for imitation or warning, a few of the peculiar excellencies of the former, in saying a great deal, yet disclosing nothing, and a few of the faults of the latter in imprudently disclosing what they are afterwards driven to attempt to conceal.

There were too great points, Right Rev. Fathers, which your solemn duty to yourselves and to your flocks require you to guard. The one was that you firmly maintain the absolute irresponsibility of every Bishop to any law, by whomsoever made.

The other was, that you should so maintain those essential rights as not needlessly to arouse the prejudices, the hostility, the opposition of the laity. For your high and solemn functions you cherish only for the benefit of those committed to your care, and you feel how seriously your usefulness would be impaired by a controversy which only a slight imprudence might provoke.

You have acted in the spirit of Christian meekness, and while manfully taking a necessary step to maintain the integrity of your order for the benefit of your wayward children, you have been careful so to disguise the offensive deed in soft words as to lull or disarm the most sensitive of your opponents.

You have done an act which you could rightfully do only on the principle that no canon binds you by its commands or prohibitions; but that your jurisdiction is paramount and original, and uncontrollable. That act of judgment establishes *for ever* your order on that basis of original and inherent right; for no judgment is ever to be presumed to be an usurpation or a wrongful act—but to flow from whatever principle is requisite to sustain it. The *act* involves the *right* to do it, and your great act establishes your absolute independence of all the canons, without which there is no free Bishop.

It has been matter of curious and instructive observation to follow the line of reasoning by which that great principle is involved, yet never expressed; and as we progress, we are filled with alternate wonder and gratitude at the charity which softened the assertion of your necessary prerogatives, which time and circumstances have made an offence to this people, and at the skill which made that charity

effectual. We are borne along from sentence to sentence by the rich and exhaustless originality of device for the peaceful attainment of an unpopular, but necessary end.

I may be permitted to select, as an example, the Bishop of Western New-York—so soft and winning of speech, so artful and astute in contrivance, so fertile in devices, so protean and impenetrable in his disguises.

Though fully persuaded in his own mind, according to the Scripture, of his great and spiritual prerogatives, he has availed himself of the modest and attractive form of *doubts* instead of offensive and dogmatic *denials* of the opposing views. Hume had applied that form of oblique assault to his diabolical purposes. A holy father has arrested the infidel's weapons from his hand, and turned them to the defence of the citadel of the Church.

This great yet prudent champion of the Episcopate first wins his readers by a full, faithful and candid statement of "facts and papers" which contain the whole events of the cause. He follows them by his "Conclusions." If accepted in a docile spirit they are eminently satisfactory. But those who are inquisitively curious as to the hidden link between the facts and the conclusions—the principle by which the one leads to the other—are justly left to flounder in the void abyss which he has been careful not to bridge, and which their shallow minds are unable to fathom.—Observe his conclusion

"As to the Court."

"It is uncertain whether we are assembled *canonically* as a special Court to try the first presentment, or as a special Court to try the second presentment, or as a general Court to try both presentments, or as any Court at all."

How could the boldest lay intellect ever deduce this *uncertain conclusion* from the "facts and papers" which showed a summons of the Court to try the only presentment which was then under the consideration of the Court, the actual meeting of the Court under that summons, the actual reading of that presentment and none other, and the order under consideration for its dismissal? He would be simple enough to turn to the Canon—trace the conformity of the proceedings step by step with its words—and bewildered by the word "canonically" he would confess his inability to explore the mystery of this reasoning, and acquiesce, with childlike submission, in what is manifestly beyond his capacity.

It would never cross his mind to solve the seeming mystery by interpreting "canonically" to mean according to the Canon—not of the General Convention, but—of *Scripture*: and *that* Canon con-

ferring on you, as the successors of the Apostles, plenary powers of individual independence, it *was* more than doubtful whether, assembled under a human summons, you even assembled "*as any Court at all.*"

He would remain bewildered, because not possessed of the great principle that you do not act *under the Canons* which assume to command and to forbid you—that you do not *derive any authority from them*—but receiving it from God through the succession, those Canons can and do neither give nor limit nor control it—but are a fond and vain conceit of men who think thus to subjugate to their will your divine and spiritual prerogatives.

"As to the presentment."

"It is uncertain whether we have canonically before us the *first* presentment, or the *second* presentment, or *both* presentments, or any presentment at all."

Here the same modest reserve leaves the inquisitive layman in the same perplexity. "Canonically" sends him hunting through the Canon of 1844 to solve the uncertainty as to whether the *first*, or the *second*, or *both*, were before the Court *in conformity with that Canon*. Our astute Father smiles propter simplicitate laicorum—who never dream, that he was denying that "*any presentment at all*" was before them, according to the *Canon of Scripture*, which no where speaks of a Court of Bishops, never intimates that one may try another, and contemplates them only as speaking, rebuking, exhorting with *all authority*. It is a simple argument;—if they have *all* authority, they are not subject to *any*!! Why kick against the pricks?—

He proceeds:

"These uncertainties in the case would, if the Court proceed to trial, make it a trial before a Court of doubtful jurisdiction, on a doubtful presentment, . . . with no authorities or precedents of Church Law to settle the questions, and under a Canon for trial admitted by almost all to be most wretchedly defective."

The inquisitive ingenuity of our Right Rev. Father has invented a new species of jurisdiction, termed "a doubtful jurisdiction." It is a species unknown to the Civil Law, but well befits an ecclesiastical Court, which is not *certainly* "any Court at all." A "doubtful presentment" is the only form of pleading allowable before such a tribunal. But it is plain no Bishop could ever be tried by such a congeries of uncertainties and doubts; and no layman could ever have the face to ask it.

The remarkable phrase "within authorities or precedents of Church Law to settle the questions" is a singularly adroit use of the

form of argument known to lawyers as the negative pregnant. It is a negative suited for the present, but pregnant of an affirmative to be brought forth in the future. It disposes for ever of the Onderdonk case—hitherto the great stumbling block—in the ascent to heights of episcopal power. Our skilful Father's most pregnant *denial* of any authorities or precedents of Church Law "is pregnant with the affirmation that the trial and condemnation of the persecuted Confessor of New York were acts of wrong, null and void, before Bishops not assembled "as any Court at all." It is pregnant with the "unuttered thought," that the Canon of 1844 was so defective as to be void, and all proceedings under it therefore void also.

This inspires us with the pleasing hope, Right Rev. Fathers, that tardy justice will restore that venerable martyr to the bosoms of his longing daughters—a work worthy of the virtue of a body whose overflowing charity has sufficed to return the Bishop of New Jersey—in the face of graven charges—without even a trial, to his independent Diocese. Our Right Rev. Father owed it to high principle to make that declaration—he consulted prudence, which these evil times require in the reserved generality of the allusion. Yet every heart on your bench, Right Rev. Fathers, leaped to apply it to its object without the aid of an innuendo—safe from the dangerous divination of the multitude. Should it ever strike them in this light, they will think the Right Rev. Father, as Dominie Sampson thought Lawyer Pleydell—"a very erudite and facetious person."

But far the most adroit implication of your freedom from the control of the Canon is in that remarkable passage, where under the form of *defects* this most learned Father makes the very words of the Canon the reasons for annulling it. Out of its own mouth it stands condemned to silence in your presence. He suggests that—

It allows a Bishop in controversy with the accused, and an assistant of the accusers, to sit—provides no challenge, no appeal, no compulsory process for witnesses, and makes the presenters the prosecutors—:

Because those things *are so in the Canon*, he rightly regards them as reasons for not trying this case before this Court at this time. Even this proposition so carefully guarded against lay misinterpretation, he further, with the utmost diligence, guards against lay prejudice. They will innocently apply the admission that the "defects of a Canon constitute no reason for wholly refusing to try a case"—to this Canon and Court—while he is laboriously asserting the difference between *your exalted* attributes, which are above the Canon, and entitle you to disregard it, if to you it seem good, and *those inferior*

persons who, like Marshall and Taney,—are bound to enforce any Law, however defective. To persons vested with absolute power, it is never impertinent to point out defects in the rules they have laid down for the guidance of their own wills. They may modify or disregard them at pleasure, and with impunity. But such conduct in Marshall or Taney would merit and receive impeachment. So exalted is your authority!!

It is curiously illustrative of the difference between civil and ecclesiastical legislation—that nearly all the qualities which are enumerated as defects in your Canon, exist in the constitution of the Supreme Court, sitting in a controversy between sovereign States. There is no appeal, no challenge; and a judge who sat below, may sit above. But the objects of the two Courts occasion the difference. The purpose of the *Canon* is to make the trial of a Bishop hard—of the *Law* to make the adjustment of state disputes easy and certain. Hence what is a *defect* in the former, may well be a *perfection* in the latter. So true and profound was the denial of all analogy between the Court of Bishops and any other tribunal on earth!!

From these recondite reasons he ventures at last, fearfully, near to the exposure of his whole position to lay eyes.

He sees “in the solemn fact” that a *new Canon is proposed*, repealing the existing Canon—a reason for not precipitating (i. e. conducting at the rate and time prescribed by the Canon) any trial of a Bishop.

I fear, Right Rev. Fathers, this reason on this solemn fact is too *plain to be safe*. It is certainly true that the possibility of your repealing a law hereafter is a valid reason for treating it as no law *till it is repealed*. But was it prudent to say so much so explicitly? Even “lay gents” are capable of a chain of reasoning no longer than this—“all Canons may be repealed, for all are defective; therefore the Bishops may refuse to obey all of them forever.”

The reason is one of those which, like the sword of the Spirit, is powerful to the dividing asunder the bone and marrow; and unless wielded with a prudent reserve, it may divide you, Right Rev. Fathers, from your loving laity.

Yet this slight imprudence in the moment and excitement of victory may well be pardoned to a Prelate who has shown how to maintain your power in the midst of concessions—retaining the reality of naked power, while leaving the robe in the hand of the usurping laity.

The brief opinion of the Bishop of Maryland is the model of perfect mystery. I omit the introductory “views,” that I may hasten to the masterly conclusion.

“In the belief that this Court, *as an assembly* of Bishops, in the Church of God, by virtue of their office, for the discharge of the duty of administering discipline in its large and full sense, is bound to recognise and respect the position, and claims, and rights of a Diocese in the said Church; and in the present instance, cannot refuse to hear and comply with the request of such a Diocese, that it be not interfered with in its inchoate exercise of discipline within its borders”—he is of opinion that the order ought to pass.

On reading the above attentively, I once heard a simple layman, with a puzzled expression, exclaim—

“Abracadabra ! ! !”

I pitied his simplicity in trying to understand it; yet, felicitated you, Right Rev. Fathers, on the security with which the “doctrine of reserve” has invested the most essential principles of your Holy order. I was never before fully aware of the power of language to conceal.

This opinion is a model of the intangible, the indefinite, the shifting, the impalpable, the spiritual, the mystical. It is everything and nothing; it is pregnant and empty; it is space, filled with substantives, yet void; it is matter of the metaphysicians, form and a congeries of points of attraction and expulsion. The *Court* melts into an indefinite “*assembly of Bishops*”—not Bishops of the Protestant Episcopal Church, but Bishops of “*the Church of God*,” met together, not *summoned*, by virtue of their office, not by *order of the Canon*, for the discharge of the duty of administering discipline, not the *trial of the presentment*; in its full and large sense, not in the empty and narrow sense of the crimes and immoralities specified in the Canon; and this impalpable assembly of an indefinite body he believes cannot refuse to hear the request of the Diocese. Indeed it would be strange if it could refuse any thing to any body.

A more effectual abrasion of the Court as a body, holding authority, is not to be found in all your opinions, Right Rev. Fathers. It is the fit sequel to that famous protest of its author, whereby in the beginning he denied the jurisdiction of the Court over the subjects submitted to it by the Canon, and boldly pronounced its proceedings “null and void” in advance. He destroyed at a blow the authority of the Court; but he emancipated you from even the semblance of obligation to obey the Canon—and what you lost in authority jointly was more than compensated by the absoluteness of irresponsible diocesan independence:

To the Bishop of Maryland you owe an eternal debt of gratitude for the skilful method he has devised for asserting safely a doctrine so fraught with danger in the evil days whercon you are fallen—

when the children's stomachs, rejecting meat, must be indulged with milk.

May I venture to contrast, for the good of the Church, and with an earnest protest against the slightest disrespect, the rather unepiscopal candor of the Bishop of Michigan, with the prudent reserve of the Bishop of Maryland.

He roundly declares—speaking of the *acts authorized expressly by the Canon* :

“No diocese could or would submit to such an interference—as its independence would be lost, and its whole action placed under the supervision of *foreign Bishops*, and a power would be raised up in the Church far worse than the *power of Rome*.”

So explicit a proclamation of that great truth was fearfully dangerous, Right Rev. Fathers, at this time. He does not correctly insinuate, but he openly pronounces that the enforcement of the Canon, according to its own provisions, will not be submitted to—it would subject the dioceses to foreign authority, worse than that of Rome. This will sound to the ill instructed laity very much like rebellion and nullification. In their rude mode of considering the Church, they dream that it is a church of law—governed by legal rules and officers, and that no diocese is foreign to or independent of another, still less of the whole Church. They made this Canon under the supposition that the whole Church had a right to *interfere* in and supervise every diocese. Even the General Convention—a body depending for existence, it is true, on your good pleasure, and which you allow to play at Canon making—is a body too powerful safely or lightly to be offended; and I much doubt if they will sit quietly under this round rating of their work. I fear they will prick up their ears when they learn from the Bishop of New Hampshire that the “authority of this Court, while administering Canon Law, is subject to the demands of the *higher Law* of charity;” and that it is bound “to see, that Canon or special laws are not so put *in operation* against the *Members of Christ's Body* (i. e. the Bishops) as to separate them from the *privileges* and *immunities* secured for them through the merey of God, by that *higher Law*.”

The untoward events of the last few centuries have painfully shaken their conviction of the abiding presence of God with those members of his Body—which sometimes they have seen make strange haste to do what in them would be sin; and they have more than once rashly applied the knife to members even of that incorruptible body—thus doing evil, that good might come, in the vain fear that the gangrene might spread.

It is over these men, Right Rev. Fathers, that you are placed to rule—like lambs over a flock of wolves. They are fierce of speech, and stubborn of heart, and prone to carry into the Church the subversive theories which shake the foundation of the state. They are proud and must be humored—they are fierce men and must be dealt gently with.

It is doubtless true, too true, that the enforcement of the Canon of 1844 is fatal to your independence. It is still more unfortunately true that the Canon is utterly regardless of the higher law of charity, and pronounces itself to be the highest and only law for your guidance in administering it; and it rises to the height of sacrilege when it assumes to authorize you “so to put it in operation against the members of Christ’s Body as to separate them from the privileges and immunities secured to them through the mercy of God.” Yet, Right Rev. Fathers, I pray you, what is to be done? The principles you cannot compromise—you cannot yield, yet you must not declare it. For these men of Belial may seize and ply the knife you have thrown down, with ignorant and destructive zeal. They may destroy the flow of Spiritual grace to the members of Christ’s Body by severing the spinal cord of the succession. Their fathers have done as much before our day, and you are the solitary and feeble monuments of the mercy of God, kept alive to preserve the genuine flow of Spiritual life till a more propitious season. You are a few in the midst of the millions of erring and hopelessly misguided protestants, who wander for ever, like sheep having no shepherd. A rash act may deliver you over to the rough hands of men who hate prelacy, and leave your cherished flocks without a guide. For these men are set in the delusion, that the Canon is a *Law*—binding Bishops no less than priest and deacons—to be obeyed, not to be set at naught, suspended, or postponed—still less to be annulled by the higher law of brotherly love between Bishops. They must be carefully and tenderly brought to know the real state of things—after the style of the Bishops of Maryland and New-York. Their eyes must be educated to bear the light of your heaven-descended prerogatives, lest they be frightened in waking suddenly at what their bewildered imaginations will mistake for the frightful spectre of Spiritual Despotism. Their fathers exorcised and laid it by potent spells—by prayer and light—by arms of the Spirit and of the flesh. Their youthful minds were poisoned with horror at its form. It was the nursery tale to frighten them to quiet. It was the giant for whose encounter their manhood was to be braced. They have been brought up in this perverse and unchristian spirit—this wayward and impatient independence—the

self-sufficient disregard of divine authority. This horror of your mild, merciful and indulgent power, which claims independence only, that it may be free to bless, is the lamentable result of that education which has imbued their minds with the errors held as the truth of God—that no power, which claims from God and is above the control of man, can be any thing but despotism—whether it be the divine right of Kings or the divine right of Bishops. To awake them suddenly to the consciousness that such is your claim were dangerous.

Right Rev. Fathers, I warn you that if you would maintain your order intact—if you would attain to the uncontrolled exercise of absolute power, you must manage the people gently, softly, astutely.

We are deeply imbued with the divine origin of your power—with its paramount authority in matters of faith as well as of discipline and jurisdiction. We know that the *latter* are the most substantial of your prerogatives; without which the others are burthens without emolument. You know the strength of this principle of inherent power. It sets at naught all attempts at control; it defies limitation; it laughs at subjection to any rules of human reason; it was given to lead it, and how shall it follow and be led by it? We know that if God himself have made you Bishops, the dispensers of His Spiritual blessings, and the administrators of the discipline of His Church, your jurisdiction is *universal*—for such was that of the apostles whose successors you are; it is paramount to all local laws, all divisions of dioceses, all constitutions of Church-government, all human authority. You can never be judged, for who is your superior? You can never be degraded, for who shall strip you of the Spiritual consecration of God? You can never be admonished, for who shall presume to know more of your duties than you on whom the ineffable light and grace of the succession have fallen?

Laymen have no right, but to the benefit of your ministrations, your intercessions, your sacramental performances, your remission of their sins. They have no duty but submission to you, the vicegerents of God. Their faith is what you shall teach. They, therefore, have, and can have, over you no control in matters of faith or of discipline. You can give them none. Your authority is not *yours*, to abandon, to share, to yield, to hold in obedience. It is a high and Spiritual gift, wielded as the ambassadors of God, over His people, at His will and for their benefit. You are His instruments for the imparting of His blessings. You have no right to restrain your own powers by any concession, by any law, by any constitution. Your very arrangement of diocesan jurisdiction is merely voluntary—for the sake of

convenience, for the partition of the field of labor, but not in any sense binding or prohibiting you from going over the world and preaching the Gospel to every creature; and all laws, Canons and constitutions, civil or ecclesiastical, which assume the contrary, are usurpations, submitted to for the time, under the coercion of present necessity; but only awaiting the fulness of time and the advent of opportunity to be rolled up as a scroll, and to melt away before your consuming and devouring authority.

These are the deep and abiding principles of your order.

But, Right Rev. Fathers, I need not recall to your minds the present prejudice the people of this country, and their fathers, have ever felt towards it. They have protested against it—taken up the arms of rebellion against it—laid violent hands on the Lord's anointed, because of it. They have persecuted, even to the death, the meek professors of this principle. They long submitted to the painful deprivations of the blessings of the Spiritual ministrations of your order, for fear of its associations. They only yielded to the yearnings of their hearts for those blessings, with fear, and trembling—slowly, reluctantly, with many misgivings, with many protests, reservations, restrictions, attempted to be imposed in the vain hope that they could secure the blessing, yet evade the authority paramount and independent. They did not know, or would not believe, that your office was an unit, and its functions inseparable, and their efficacy dependent absolutely on their freedom from control here, and their unbroken descent from above, and undiminished transmission to the future. You knew how futile was this belief, but you knew how necessary to salvation was your order. You suffered them to act on the delusion that, in spite of themselves, they might obtain the blessing. You have acted, and they have tolerated you, because you have acted as if you were under the Canons. Though not bound by them, you have to be careful to do nothing without, or beyond, or against them. You have not admitted them as a source of authority, or a paramount control; but, having the right to act according to your own wills, you have wisely resolved to let that will appear only in the shape of Canons, and acts in conformity thereto. You have thus secured substance of power without assuming the formal emblems of sovereignty. The laity have been won to the blessings of your rule, because they have assisted at *your* Conventions, been consulted in your choice, had a voice in your laws, and your administration. They have been bred up in the idea that they do of *right* what *we* know they do only on sufferance; and they would furiously repel the suggestion that they have not the same right to control and limit

your authority—to give or withhold your jurisdiction, that they have relative to their civil servants. They dream of, and will submit, I fear, to no other basis of your authority. The day on which you shall reveal the full extent of your paramount claims to inherent prerogatives, will be the last of your blessed rule of this people.

Be careful then, Right Rev. Fathers, how you reveal what this most momentous judgment involves of defiance of Canon law and lay authority. Be content with the fact of absolute power under the humble forms of constitutional rule, of diocesan independence, of the right to make and practice your own code of morals, and repeal the law of the Church by the higher law of charity. But fly the symbols of irresponsible power as the myrtle's poisoned chaplet: for the day of its assumption is the last of your order.

Be content with christian humility, to *seem* to the eyes of men to be the servants of servants, that you may *be* the lords of lords over God's heritage.

A year rolled round Right Rev. Fathers between the first and the second of these great processes, in which you have played so lofty a part.

The latter was equal in dramatic interest, in play of character, in astuteness and fertility of invention and contrivance, in ecclesiastical wisdom, in the greatness of the legal and moral principles illustrated and maintained.

I turn with reverence to the great conclave of the Second Court of Camden.

The wisdom of those cautious Right Rev. Fathers is best illustrated by the sequel of the first trial.

It was the clamor which greeted the slight and partial revelation of the significant *act* you had performed, which encouraged the renewal of the deplorable agitation of a new presentment. Your wise moderation has converted the evil into a blessing. Your former judgment vindicated the immunity of the Bishops from trial. The new presentment gave you an opportunity to illustrate the rules of episcopal morals.

The first trial went off on a naked question of law, the existence of an *absolute* discretion in your order to regard or disregard the canons at your pleasure. The discontent which even your guarded opinions created in the minds of the laity, suggested the danger of disposing of the new presentment in so abrupt and definite a shape. You therefore complicated the means by which you attained the same end; and you made it incidentally useful by resting your judgment on the difference between vulgar and episcopal morality.

The distinction briefly stated, I take to be this :

All moral distinctions relate exclusively to the intention. If there be no evil intention there can be no crime. All external acts are purely indifferent till characterized by an intent. What then is evil intention ?

The civil law, which is the rule of lay conduct, deduces the intent from the act, in the absence of explanations. If a man take another's property and apply it to his own use, it is called stealing. If he procure a note to be applied in renewal of another, and discount it *de novo*, it is called obtaining money under false pretences. The criminal intent is the intent to do the *act*.

With a Bishop it is different. Though he do those acts with full knowledge of all the circumstances, yet unless in addition to the acts he mean to commit a crime, or mean to do an immorality, he is guiltless. He has not the intent criminal. For no mere act without criminal intent should any Bishop be punished ; and, since such intent can never be proved, otherwise than by confession, it is plain that no Bishop can ever be amenable to any tribunal for any act, however much the same act would subject a layman to punishment. The doing therefore of acts usually termed criminal, is no ground of imputation against the perfect "purity and uprightness" of a Bishop. The apostolic graces conferred at consecration are efficacious to restrain or to purify his spiritual part—the thoughts and intents of the heart, whence proceed adulteries, fornications, theft, and such like ; though those graces are not always so efficacious as to restrain the bodily acts of the Bishop—the law of his members warring against the law of his mind.

Thus, though a Bishop should lie with his neighbor's wife, he would not be guilty of adultery, unless at the time he intended to *commit adultery*. It is not the looking on a woman which is sinful, but the looking on a woman to lust after her, which is adultery of the heart. On this broad principle, not a few of you Right Rev. Fathers vindicated the *purity of intention* of Bishop Onderdonk, in the performance of acts, which in the impure mind of a layman would have admitted of but one interpretation.

This view of the moral law, as applied psychologically to investigate the criminality of Bishops, though strenuously urged by some of you, was not so fortunate as to succeed in arresting the great scandal of his condemnation. It was a novel and somewhat abstruse view of the matter. It required time to mature. It was only on reflection that it could pervade the whole of your order.

The silent working of truth has been signally illustrated by the result of the second trial of Bishop Doane.

Apparently, only eight of you came fully imbued with that view of episcopal morality, and chiefly the same persons who had voted for the immunity of the Bishop of New-York. But the progress of the discussion resulted in an unanimous vote of clearance—which can be explained on no other principle; and that must now be regarded as the rule of church morals for the Bishops.

It is true it is confined to *them*; for to indulge the laity and the inferior clergy in such immunities might seriously undermine the morals of the community. They cannot be trusted to that extent, they must therefore rest subject to the harder rule of vulgar morals.

I pray your indulgence Right Rev. Fathers, while I extract, for the benefit of the church, the full import of this *leading case* of episcopal morals. Parts of the process are obscured by the doubts of some of you as to the rule of conduct, and by the skill of others in avoiding offense, while pursuing a principle. Thus alone is one entitled to interpret your apparent reversal of some of the rulings of the former Court. Any doubts which may have caused to vacillate the conduct of some of your weaker brethren, must be considered as amply atoned for in the unanimity of the final vote. We indulge the fond hope that neither reflection, nor the clamor of the multitude, will cause them to repent of this vigorous step in advance of the vulgar; but that as it was the result of deliberation, it will be maintained with resolute consistency.

Divisions are always to be deplored in the Bishops, but especially on points so vital as the distinction between vulgar and episcopal morals; and when reflection has once produced unity or conviction, retracing the steps would be most melancholy and disheartening. By this decision we are relieved from the scandal of appearing to be a divided church—a fact which the Onderdonk trial reversed—and which the process of Bishop Doane was renewed. Let us cling to this blessed unity.

The first deviation from the rules of your former proceeding was the prohibition of motions from members of the Court. It was a concession to the prevailing notion that you were bound to conform to the methods of judicial procedure; and it strengthened the dissatisfaction, and pointed the criticism at your final award. It was, however, an evil which grew out of the accession of Bishops to the Court, not on the former trial. It was a consequence of the then unsettled principles of your procedure; and, though it was more or less observable throughout the course till the final step, yet *that* was so decisive as to leave an entirely satisfactory impression of the ultimate concurrence of all the Bishops on the vital questions involved, as well of law as of morals.

The Bishop of Maryland, ever zealous in the performance of that part of the duty of the Judge which makes him counsel for the accused, moved for the admission of the committee of New Jersey to lay its supplemental purgation before the Court.

The Court refused to entertain the motion, at the instance of a member; but gave the accused leave to renew it, if so advised.

This was an unfortunate deviation from the established method of "purging" a Bishop, and resulted from an erroneous application in an Ecclesiastical Court, of the well-settled, but irrelevant practice of Civil Courts, to remain passive till called into activity by a motion of the parties. It was the error of the seven Bishops now for the first time on the Court. To their inexperience similar subsequent deviations must be ascribed. They were continued till they found themselves within a hair's breadth of a trial; from which only a speedy reverting to pure ecclesiastical principles saved them. Honor to the courage which would recant even such errors in the face of the world.

These reversals were interpreted by the advocates of the application of the morals of the vulgar to the Bishops, as indications that your accession to your number had reversed your position. The result showed how futile is any calculation based on the faithlessness of any Bishop to the principle and immunities of the order.

The Bishop of New Jersey took a night to reflect on the momentous change the order made in his position. In the morning he came in, and adopted the motion of the Bishop of Maryland, and added to it a motion to dismiss the presentment, as the natural result of the purgation effected, of the former dismissal, and of the law declared by the former Court.

If the Court meant to adhere to the former precedent, the granting of the motion was too plain to be resisted. But the seven Bishops were not satisfied, and the discussion proceeded.

You resolved not to admit the Convention either by the committee or by the Bishops—another decided adoption of the principles of secular proceedings, which recognize only parties to the record as before the Court.

You, however, allowed the Bishop to read the representation of the committee, and professes your readiness to receive and enter on your record the *testimony and acts of the Convention*.

Your refusal; Right Rev. Fathers, to admit the Convention, was justly felt and resented by the Bishop of New Jersey as a slight. Nominally before your bar as a criminal, he felt strong in the inviolability of his episcopal prerogatives; and he scornfully met your re-

ception of the acts and evidence of the Convention with the taunting reply.—Well, I suppose I must be grateful for small favors; but really this is too small to be grateful for.

Still it was by no means insusceptible of a construction in harmony with your former decision. You had refused to admit the Convention as a party; but you allowed the accused to read their acts and evidence. But the reading implied their legal relevancy to the motion; and the previous Court had, while careless about forms, established, by its decision, that a diocesan purgation was a sufficient ground to arrest the proceeding of your Court to trial. It is plainly immaterial how the fact of the purgation gets before you. Whether by the officers of the Convention, a member of the Court, or on the motion of the accused, it is the *purgation*, not the *party* producing it, on which you act. If efficacious in the hands of a member of the Court, it is not less so when pleaded by the accused for his protection. It comes more in accordance with judicial analogies from him than from them. The petulant complaint of the accused, therefore, is hardly justified in view of your lenient and liberal allowance of the record; and we need only look to the result to trace the effects of its admission on the judgment in the case.

It was fully within your powers, Right Rev. Fathers, to exclude or to admit it, since your exemption from the rules propounded by the Canon is established. Nothing can be clearer than that the resolution, declaring that you did not recognize the right of a Diocese to come between your Court and a Bishop, presented canonically by three Bishops, leaves the case precisely where it was before.

The New Jersey Convention never claimed any right as opposed to a *canonical* presentment by three Bishops; it had simply claimed the right to protect him from an *uncanonical* persecution. It had never claimed, nor had you allowed the right to *come between* you and a canonically presented Bishop; but you had solemnly held a *purgation*, by a Convention, to be a sufficient reason for not trying a Bishop. *That* resolve you have not revoked, and will never revoke or revise. It is a part of the prerogatives of your order, asserted by the Courts, and now never to be abandoned. It forever puts an end to the possibility of trying any Bishop on the presentment of three Bishops: for no presentment by them can ever be *canonical*, and no Bishop is so ignorant of his power over his Convention as to fear the result of any purgation made in due ecclesiastical form. Your resolution, therefore, is only another of those graceful concessions to the prejudices of the laity, in favor of the conformity of your proceedings to the Canons. Its well selected phraseology satisfies their doubts, and

leaves you free to follow your good pleasure. The very unanimity was preëminent evidence of the adroitness of the language; and the result of the trial sufficiently indicates that the resolution puts no insurmountable obstacle in the way of terminating any trial in the manner of that of 1852. You may well smile at the simplicity of the laity, which reposed on that resolution as an abandonment of the *uncanonical* discretion to dispense with the Canon, which the decision of 1852 seemed to them to imply!!

By your order you allowed the accused to read to you the evidence taken in his exculpation, for the purpose of enabling you to resolve whether he were too innocent to be the subject of a presentment. Nothing can be a stronger illustration of the futility of the Presenters' appeal to the analogies of the Civil Courts. They proceed on wholly different principles. They carefully shut the mind to *all evidence* of any sort, except what the parties *put in* at the actual trial. To read in a newspaper statement touching a criminal trial, vitiates a juror's verdict; and Lord Brougham met the sharp remonstrance of his bar for reading the regularly taken evidence before it was submitted to him by the counsel. The Bishop of New Hampshire states the rule of *ecclesiastical* law. "The Bishops in Court convened are not bound in duty to shut off from their minds all knowledge of facts connected with the history of a proceeding against a brother. They are bound in conscience to judge according to knowledge, however the knowledge may have been gained."

The admission, therefore, of the acts of the Convention was right—for it was a canonical purgation.

The admission of the *exparte* evidence was also right, for it gave *knowledge*, "however the knowledge may have been gained!!" The extreme jealousy with which the law guards the civil judge from *exparte* bias, would be misplaced if applied to the minds of Bishops; for the restraining grace imparted at consecration effectually exempts them from human frailty. *Cessante ratione, cessat et ipso lex.*

The admission of both, or either, involved the principle that they were to have some influence on the result; and if *any*, that must be *decisive*, for it was clear it could not be countervailed by any acts or evidence on the part of the presenters. It therefore, in *principle*, virtually decided the motion to dismiss.

Yet the indefatigable Bishop of New Jersey pursued his argument at exhaustless length, and with exhausting labor. You, Right Rev. Fathers, were witnesses of the devoted zeal with which he defended in his person the immunities of Bishops. Your patience attested the interest you took in the result, where you were both judges and parties.

You know what scorn, and wrath, and execration, and sarcasm, and vituperation, he poured on the heads of his lay persecutors, and how little the august presence of the Court caused him to veil the expression of similar fallings towards the Three Presenters. You know how bold his bravery, how defying his language, how unreserved and how reiterated his protestations of innocence, how unmeasured his ascription of malice to his accusers, lay and clerical—*till after the reply of the Right Rev. the Bishop of Ohio!!*

That Right Rev. Father, one of the Presenters, was the victim of the delusion which measures the conduct of Bishops by the rule of vulgar, not episcopal, morals—and holds them accountable to the tribunals appointed by the Canons of *our Church*. On these grounds he based his appeal, and not without effect, in shaking some of your minds on those grave and fundamental questions.

When he closed, the impression permeated through the Court, that there would be a majority, of from one to three, in favor of undoing all the last Court had done; pulling down the magnificent fortress of episcopal independence, and laying every diocese open to the intruding steps of any three Bishops inclined to pry into their neighbor's morals.

The Bishop of New Jersey quailed before a result so disastrous—not to *him*, that was nothing—but to you, Right Rev. Fathers. The tone of his reply was strangely different from the tone of his first appeal. The one was that of confident and assumed victory, proudly trampling on his enemies already, in anticipation, beneath his feet. The other was soft, submissive, deprecatory, conciliatory, kind and loving to his accusers, who had now become his brethren; mournfully moving in his prayer to the Court, that those of you who felt yourselves free from the failings, the errors, the indiscretions of mortals, should throw the first stone at him, the deserted, oppressed, stricken victim of malice and misfortune.

When the Court was cleared, and the eye of the profane world removed, things took an ecclesiastical turn.

The consideration of the motion to dismiss, was merged in a scheme to escape the painful necessity of deciding it. The Right Rev. Father of Western New-York, ever fertile in resources, and supposed to stand in peculiarly brotherly relations to the Bishop of New Jersey, suggested the possibility of a confession by the accused, such as might disarm the numbed vigor of the prosecution, and afford an escape to the wavering minds of the lovers of episcopal peace on the bench.

It was emblematic of the approaching unanimity which was about

to remove the scandal of our being a divided church, that the Bishop of Pennsylvania appears on the record as the mover of the resolution for the committee to "confer with the Presenting Bishops and the Respondent, to ascertain whether they cannot come to *some understanding* which shall be mutually satisfactory, and *also* fully answer the purposes of justice."

In the profane Courts, that friendly and christian proceeding would be harshly called an attempt to "compound a felony," and would be punishable in the parties, and ground of impeachment in the judge. Bishop Doane had rightly divined the difference between episcopal and civil morals—when he first compounded the felony with Deacon. How simple were the Presenting Bishops to make *that* one of their specifications, the correctness of which principle the Bishops unanimously resolved!!

The committee, unanimously appointed, representing the imposing power of the foreshadowed inclination of the Court, sought the Presenters with a confession, manifestly based on the principle of bidding at an auction, the lowest price first.

It grudgingly admitted, that under the pressure of pecuniary difficulties, but with the purest motives, the Bishop of New Jersey had fallen into imprudences.

The obdurate Presenters did not think that worth considering.

The Committee returned with the form of another confession—about half-way between the former and the one which graces your record as the trophy of the triumph of ecclesiastical discipline.

The Presenters, among many other things, suggested that the confession was too evasive to be considered in good faith: and that, were it more perfect, it could never be a reason for their withdrawing the presentment—since in proportion to its approach to perfection, did it approach a plea of guilty, and make the withdrawal an absurdity. It is not unworthy of remark, that in the course of these negotiations the fears of failure and responsibility were brought to bear, by delicate hints and innuendos, on the nerves of the Presenters, backed by the suggestion of a strong vote by the Court—from more than one quarter. They were all repelled, and the Committee yielded the effort at compromise with the Presenters, and resolved to compromise themselves to the Court.

Under the stress of circumstances, it was plain that a stronger confession alone could carry the Court and save the Church from the disaster of a trial.

The conscience of the accused was appealed to, and a rigorous pressure yielded the third confession. In the lowest deep a lower

deep was found; and it was well known that the interests of peace and the Church were secure, ere the sun went down on the conference day.

After the repulse of the Committee by the Presenters, that confession was made, which was on the following morning laid with the report of the Committee before the Court.

The Presenters, with what in a better cause would have been heroic fortitude, firmly laid on your table their stern remonstrance against your invasion of their prerogative to dismiss or to prosecute, and reiterating their demand that, in conformity to the Canon, you should require the accused to plead guilty or not guilty, and subject him and the Church to the needless scandal and humiliation of a trial: needless, Right Rev. Fathers, since you were resolved on his acquittal; and dismissal without trial was a shorter road to the same end.

You disregarded that demand, and set a further example of the radical difference between ecclesiastical and secular proceedings.

You accepted the confession as at once meritorious, exculpatory, penal, and penitential. What it confessed it atoned for—what it omitted it disproved, or justified as episcopally right. What it evaded, you winked at—what it admitted to be possible, you agreed to consider not done in fact.

The poverty of the English language furnishes no word to describe this singular document. The friends of Bishop Doane protest that it is not a confession—and that is true—for a confession is a statement of the truth of facts charged, while this paper is confined to intentions, affections of the mind, possibilities, and exculpatory circumstances. But neither is it an acknowledgment—for that, likewise, seems to be of the like nature as a confession—to have relation to facts charged, not to the intentions with which they were done, if done at all. It rather seems to be a paper of a peculiarly ecclesiastical character, modeled on the confession of Bishop Onderdonk, which, not deeming it becoming to question the truth of *facts* incontrovertibly true, yet confessed, “in excuse or palliation, I hereby protest before this Court, and before Almighty God, my entire innocence of all impure or unchaste intention.”

This paper should be called Bishop Doane’s confession of his innocence.

On the consideration of this paper, some apostolic inspiration harmonized every difference, hushed every doubt, removed every scruple, and brought you all, with one mind and with one heart, to adopt the following solemn and ever memorable *order* :

Whereas, Very serious embarrassments have been thrown in the way of the action of this Court, first by the postponement of the trial of the original Presentment, and afterwards by the decree and orders of the Court of Bishops which assembled at Camden in October, 1852, and continued its sessions by adjournment at Burlington, to wit :

“ Whereupon it was decreed, that

“ *Whereas*, Previous to making of the Presentment now before this Court, the Convention of New Jersey had investigated most of the matters contained therein, and had determined that there was no ground for Presentment, therefore,

“ *Ordered*, That, as to the matters thus acted upon by said Convention, this Court is not called upon to proceed further.

“ *Whereas*, The Diocese of New Jersey stands pledged to investigate any charges against its Bishop that may be presented from any responsible source ; *And whereas*, a Special Convention has been called, shortly to meet, in reference to the new matters contained in the Presentment now before this Court, therefore,

“ *Ordered*, That this Court, relying upon the said pledge, do not now proceed to any further action in the premises.”

Which decree and orders have been pleaded in bar to the trial of the present Presentment.

And whereas, The Convention of the Diocese of New Jersey has, through a committee of its most influential and honorable laymen, satisfied itself, that, whatever may have been the imprudences in word and act of the Respondent, there was no intention of crime or immorality on his part.

And whereas, The said Convention stands pledged to investigate any further charges which may be brought at any future time, from any quarter, against said Respondent, with fairness and impartiality,

And whereas, The Diocese of the Respondent is now engaged in raising the sum of one hundred and thirty-five thousand dollars for the release from all embarrassment of St. Mary's Hall, Burlington College, and Riverside, the surplus income of such property, when thus released, is to be annually applied to the liquidation of the remaining debts of the Respondent.

And whereas, The Respondent comes into Court and says :

“ The undersigned, in prosecuting his plans of Christian education, in connection with St. Mary's Hall and Burlington College, found that *the expenses of the enterprise greatly exceeded his calculations* ; while the assistance on which he had confidently relied, perhaps too sanguinely, fell altogether short of *what he deemed his reasonable expectations*. In this condition of things, being entirely left alone, and

without advice, every step which he advanced involved him more and more deeply in *pecuniary embarrassments*. In endeavoring to *extricate himself from these embarrassments*, he admits that he made representations which, at the time, *he believed to be correct*; but many of which turned out, in the event, *to be erroneous*. He was also led, by *his too confident reliance* on anticipated aid, to make promises which he fully expected to perform; but which, experience has taught him, were *far too strongly expressed*. He was also induced, for the sake of obtaining money to meet his necessities, to resort to methods, by the payment of exorbitant interest on loans, which he did not suppose were in contravention of the law, and *which common usage seemed to him to justify*. He also, in entire confidence in his ability to replace them, made use of certain trust funds, in a way which he deeply regrets; and, although they have long been perfectly secured, *does not now justify*.

“The embarrassments here referred to were followed by a long and well nigh fatal illness; which, withdrawing him entirely from the business which he had carried on *alone*, was mainly *instrumental in the entire failure in his pecuniary affairs*. The perplexity arising from this failure, with the protracted infirmity which followed his sickness, made him liable *to many errors and mistakes, which might easily bear the appearance of intentional misrepresentations*. In connection with the assignment of his property, he set his name, under oath, to an inventory of his goods, and also to a list of his debts, *which he believed to be correct*; an act which, he grieves to find, has given rise to an impression in the minds of some that *he exhibited an insensibility to the awful sanctions of the oath of a Christian man*. But, while he laments the impression, he declares that his act *was only done under legal advice, and in the firm conviction of its correctness*.

“Some time after his recovery from the illness above alluded to, but while he was still in the midst of his perplexities, smarting under his heavy disappointments, and wounded by the imputations to which, in some quarters, he was subjected, the letter of the three Bishops came to him. He has no disposition to ascribe to them any other than just and proper motives in thus addressing him. But, at the time when he received the communication, he viewed it otherwise; and, under the strong excitement of the moment, penned a pamphlet, *parts of which he does not now justify*; and expressions in which, in regard to those brethren, he deeply regrets.

“In reference to his indebtedness, he now renews the declaration of intention, which he has constantly made, and has acted on, to the utmost of his ability, thus far, to devote his means, efforts, and in

fluence, in dependence on God's blessing, to the payment, principal and interest, of every just demand against him—an *expectation which* there is reasonable hope of having fulfilled, *since a committee of the trustees and friends of Burlington College*, by whom both institutions are now carried on, have undertaken an enterprise, which is nearly accomplished, *to discharge the whole mortgage debt*, and thus secure the property at Riverside and St. Mary's Hall, with that of Burlington College, to the Church for ever, for the purposes of Christian education. And this done, the trustees have further agreed to appropriate, during his life, the surplus income of both institutions to the liquidation of all his other debts incurred by him in carrying on said institutions.

"That, in the course of all these transactions, human infirmity may have led him into many errors, he deeply feels. He does not wish to justify or excuse them. If scandal to the Church, or injury to the cause of Christ, have arisen from them, they are occasion to him of mortification and regret. For these things, in all humility and sorrow, before God and man, he has always felt himself liable to, and willing to receive, the *friendly reproofs of his brethren in Christ Jesus, and especially of the Bishops of this Church.*

"G. W. DOANE,

"Bishop of New Jersey."

Ordered, Therefore, That the Presentment before this Court be dismissed, and the Respondent be discharged without day.

That solemn record is worthy to be transmitted to all time, as the unanimous declaration of the Bishops of the United States of the morals and law prevailing in their Church in the middle of the nineteenth century from the advent of Christ.

The history of the Church affords no other act of equal solemnity, sanctioned with such deliberation and adopted with such unanimity.

Right Rev. Fathers, one deep feeling of proud exaltation should pervade your hearts at the thought, that God allowed you to have part and lot, as humble instruments, in this great act.

It affirms the most pregnant meaning of the decree of 1852—establishing the absolute power and independence of the Episcopal order, who "*hold from Jesus Christ.*"

It forever establishes the exemption of the Bishops from the rules of vulgar morality, and leaves them to direct and spiritual inspirations for their rule of conduct, which can never be the subject of criticism, much less of judicial cognisance, by laymen.

Yet you have not been unmindful of the episcopal policy of seeming to do less than you really do; and substituting doubts and perplexity for entangling and unpopular assertions.

The dull eye of the laity will hardly penetrate the disguise by which those acts are veiled. For your eye it may be permitted, to lift the veil and explore the mystery of the process, and the result.

The order is prefaced by a recital. It must be intended to *appear* to contain the reasons of the decree.

The first recital is "that very serious embarrassments have been thrown in the way of the action of this Court by the postponement of the trial of the original presentment."

The inquirer will in vain strive to penetrate the relation of that fact to the decree. You mean to *insinuate*, that the postponement was the cause—though, in fact, only the *occasion and pretext* of the refusal to proceed with the trial in 1852. You still find it very necessary to keep on the cover of bad reasons to screen that most salutary act of vigor.

You proceed to add—"and afterwards, by the decree and orders of the Court of 1852"—which you recite, with the statement that they had been *pleaded in bar* of the trial.

It is unfortunate that so important a matter as a plea in bar of that former order should not appear on your record, any where prior to this order; for the skeptical and profane will suggest that it was thrown in by *you*, Right Rev. Fathers, as a makeweight. Still its position, as one of the grounds of your decree, is significant of a reiteration of the validity of that order by an unanimous vote. It converts an order passed by a vote of one into the law of the church by unanimous consent. For however allowable it may be to disguise the reasons of a judgment in an opinion, the recital of a fact in a decree, as the ground of it affirms, that in point of law, it is a *sufficient ground*. To say that whereas a former judgment has been pleaded, *therefore* we give judgment for the defendant, means in law that the validity of the plea *is allowed*. If *other* pleas are in like manner recited, that does not at all weaken the allowance of any, but embraces them all. Thus the recital of this plea in bar of the order of 1852, and the word *therefore* in *your* order of 1853, involves the ratification of that former judgment, and asserts the validity of the plea as a bar.

You further recite the record of purgation, which had satisfied the Diocese of New Jersey, that whatever may have been the "imprudence of the Bishop in word or act, there was not intention of crime or immorality on his part."

The same significance attaches to *this* recital. You did not mean in so solemn an act to recite irrelevant or impertinent facts. You had admitted this purgation to be proved as relevant to the motion

to dismiss. Its recital on the judgment can only mean that it is a reason and ground of the decree which follows. Thus this great principle of the Court of 1852, established by so close a vote, you now have the happiness of placing behind the impregnable bulwark of an unanimous vote of the Bishops.

We have previously enjoyed together, Right Rev. Fathers, the exquisite tact displayed in reconciling the suspicious minds of sticklers for Canon law, to the maintenance of the principle, by passing a resolution apparently repudiating, but really not excluding it at all!! Each party leaves your presence contented, one with the illusory shadow, the other with the substance of power and victory!!

These things are all very well as incidents to the *great triumph*.

But the *real matter of moment*, the pith of *this* proceeding, lies in the *principles of morals asserted and sustained as the basis of the moral law of Bishops*. That lies hid in the confession of the accused, its legal relation to the presentment and to the order of dismissal. Fully to appreciate its power, we must consider them all in their relations.

The confession is alleged as one of the *facts* on the *consideration* whereof the Court dismissed the Presentment. It means *therefore* that the fact and contents of the confession *justified* the Court in that step, in logic and law. *How* it so justified them is not asserted. It is to be implied, and what it is, is the real pith of the proceeding.

Now first a confession, if it be a reason for dismissing a presentment at all, can be so only when it really and fully meets the *whole facts charged*. I do not say, Right Rev. Fathers, that without the confession you could not dismiss. On the contrary, that is involved in the fact of your absolute discretion to act under the higher law. But if it only *meet part*, it can be no ground for dismissing the *residue*. Your judgment, Right Rev. Fathers, is that this confession is a *legal reason* for dismissing this presentment, and *that is conclusive of the fact that such is the relation between the two*.

But what that relation is, it gravely concerns all men to know.

Now plainly, we are here again on one of those striking peculiarities of ecclesiastical jurisprudence, to which the civil court offers no parallel.

In those Courts, if a prisoner confess certain facts less than the whole charge, the trial proceeds, and they are given in evidence to the jury with the other evidence. They form part of the general mass on which the verdict is rendered; and, a verdict of acquittal or condemnation follow the sufficiency or insufficiency of the evidence, including the facts confessed.

It is clear you did not treat the confession as *evidence*.

If the confession be generally of the truth of the indictment, then it is equivalent to a plea of guilty, and the Court proceeds—not to dismiss it, but—to render judgment of condemnation against the prisoner.

It is equally plain you did not regard this confession as any plea of guilty.

It indeed falls within no known category of legal proceedings, for *there*, just in proportion as the confession is perfect, just in that proportion does it absolutely prevent the possibility of any other judgment than a condemnation. Yet *you* followed this one by an order to go without day.

The reason lies in the simple fact that the accused was a *Bishop*, and as such entitled to his *benefit of clergy*; that great *canonical privilege*, based on the principle that acts punishable in a layman, were no crimes in a clergyman, and when the *facts* were proved or confessed, the consequences was not condemnation and judgment, but arrest of judgment and discharge. It is this great principle that *you* have asserted for your order. The profound reason of the law is, that acts criminal in a layman are not criminal in a clergyman. The one is to be judged by vulgar, the other by episcopal criteria; and the principle of the distinction is, as I have above explained, and the only intelligible one, that crime consisting in *intention*, and the Bishop being protected by the special grace of the succession, the *fact* does not involve the *intention* to commit sin. It is therefore not susceptible of being proved to be criminal, since proof must ever be confined to outward acts, and they can never prove more than the doing of the act. They can never show it was done with the intent to commit sin, and till then there is no guilt. This is episcopal morality.

Read by its light, the confession and the judgment became luminous. Judged by any other, they are both—to human reason—lame and impotent conclusions. It is this great primitive principle of the clerical code which your judgment has affirmed in the midst of the nineteenth century, as the law of the church *now*.

I pray you, Right Rev. Fathers, bear with me while I demonstrate the reality, the extent and the value of your decision.

The principle of the *privilegium clericale* was devised and developed in the palmy ages of the clerical order. It sprang from the central conception of a priesthood endowed, by specially effectual graces, to restrain them from sin, purifying their minds from the corruptions of the world, in whose midst they were for its guidance, instruction and example. Thus restrained, it was plain they could not break

through the barriers interposed by a Divine power between them and the commission of evil. Whatever they did was by the very act sanctified to the eyes of men. They were bound to believe the acts, which in laymen would be flagrant crimes, in clergymen innocently done. The outward act alone was cognizable by the eye of flesh, the spiritual intent was revealed to the eyes of the Supreme alone; and he had promised to illuminate, and purify, and sustain them. It was therefore plain that *no* human *external* proof could *disprove* this *internal* purity. It were iniquity, worse than the crime, to punish a servant of God for doing an external act with all "purity and uprightness" of heart. It were presumption for laymen to assume authority to pronounce a priest guilty. The *fact* of the consecration was his sufficient voucher.

It was therefore the law of the church, adopted as the law of the land, that if a clerk were indicted, he might be claimed by the Bishop, or himself plead the *fact of his* clerkship or orders, and thereupon immediately all proceedings were arrested. Or the clerk could stand his trial as an ordinary man, take the chances of an acquittal on the principles of evidence applicable to the laity; and upon failure, and conviction by *that evidence*, claim his *benefit of clergy*; on the principle that however conclusive the proof may have been, *humanly* considered, it ought to weigh nothing against the conclusive presumption of his purity, founded on his ordination.

A learned judge remarks—

"This latter way is most usually practised, as it is more to the *satisfaction of the Court* to have the crime previously ascertained by *confession* or the verdict of a jury." By *crime* he means, in the language of the law, *fact*.

It was *this* course, Right Rev. Fathers, that you thought proper to pursue.

"Afterwards"—our legal author proceeds, in the tone of a moralist of the vulgarian school—"indeed, it was considered that education and learning were no extenuations of guilt, but quite the reverse."

He then gives the several steps by which this priceless immunity of the clergy was frittered away, till finally it was wholly abolished. On that disastrous result, in the spirit of his whole comment, he remarks—

"From the whole of this detail we may collect, that however in times of ignorance and superstition, that monster in true policy may for a while subsist, of a body of men residing in the bowels of a state and yet independent of its laws, yet when learning and rational religion have a little enlightened mens minds, society can no longer endure an absurdity so gross as must destroy its very fundamentals."

It is this "little enlightenment" Right Rev. Fathers, which in the twilight of the eighteenth century, and in the mists of English prejudices, stripped your order of this great protection. So disastrous is the subjection of the Church to the dominion of the State where *rationalism* pervades religion. It was reserved for the greater enlightenment of the middle of the nineteenth century, for the spiritual freedom of this Republic, for your clear and spiritual conceptions, and your hands untrammelled by the civil supremacy in matters ecclesiastical, to turn your eyes to the meridian splendor of your order in the tenth century, and realize, by the most formal and authentic act in this day, the proudest prerogative of that earlier and purer day—the privilege of the clergy to be exempt from crime and its consequence—punishment.

Yet you blended discretion with your vigor. Feeling it to be wise for a "body of men to reside in the bowels of a state, yet independent of its laws," yet you justly feared the privilege itself might fall by its too great extension. You remembered that it had in early ages been perverted from its legitimate purpose and principle—the protection of the ordained clergy: and that it was the extension of its benefit to not merely the inferior clergy, but to even little subordinate offices of the Church or clergy, and even to many totally laymen, which contributed to bring it into discredit and produced its abrogation. You wisely avoided that extreme. You resolved to assert, in its full efficacy, the benefit of clergy for the *episcopal* order, but to leave the inferior clergy subject to the operation of the vulgar rules of evidence and law.

You acted wisely and consistently; for it is certain that the greater spiritual grace conferred on a bishop at consecration, secures him from sin under greater liberty and temptation, than the inferior graces of Presbyters and Deacons could possibly resist.

Like the modern judges, you preferred to have the real extent of the guilt or innocence of the accused ascertained before the benefit of clergy should be imparted.

This is the office performed by Bishop Doane's confession of his innocence of intention of crime or immorality.

It must be treated as a statement of the substance of the charges in the presentment, in the eye of the Episcopal morality. Whatever the specifications might imply in a layman, they in a Bishop imply no more than is set down in the confession. To suppose the confession to stop short of the *whole* substance of the charges, and yet to have been made by the court a ground of judgment touching the whole, would be hardly respectful: and indeed more than one of you, with that candor which befits a tribunal governed by the higher law of cha-

urity, kindly intimated to the Presenters that they had better accept the confession, since it covered all they could probably prove. The Presenters had stated that they stood ready to prove *all* they had alleged, and it is scarcely to be presumed that their brethren would hesitate to give them credit for truth.

Thus treated as a means of measuring lay crimes by episcopal morals, it will serve as a key for future translations, a scale of relative guilt or innocence, a barometer of the weight or lightness of criminal pressure, of external deeds upon the inner conscience of the layman and the Bishop. It will serve as a general unit to estimate the specific gravity of lay and clerical crimes.

It starts from the true point of view. It discards *acts and facts*, and confines itself to a confession of "such *error* as his *conscience* accused him of." We are thus at once transported from the world of external actions to the inner and invisible domain of the episcopal conscience. Indeed it is observable, that upon the Conventional purgation there seemed to be little or no dispute with the presenters about the *facts and acts* charged to have occurred or to have been committed. The purgators chiefly directed their inquiries to the *intention*. The Protest and Appeal chiefly confines itself to the same internal view, while narrating most of the facts charged. The Confession is another aspect of the same view.

The Presentment asserted that certain *specific acts* had been done, which were *immoral and criminal*.

The purgation exculpated "him from any charge of crime or immorality made against him." *This*—interpreted by the vulgar rule of law, would mean—he had not done the *acts* charged against him. But the recital of your order puts it in its proper *ecclesiastical* form.

"And whereas the Convention of New Jersey has . . . satisfied itself that, whatever may have been the *imprudences in word and act* of the respondent, *there was no intention of crime or immorality on his part.*"

We presume, the "imprudences in word and act" are to be interpreted, the *facts* charged in the *presentment*, to which the *confession* assigns their *moral import* in the eyes of *Bishops*.

The Presentment, the bungling work, it is understood, of a Baltimore scrivener, written wholly on the vulgarian theory, contents itself with narrating the various *acts* done by the Bishop of New Jersey, which *acts* it charges to have been immoral and criminal in a christian Bishop. Your exposition of the Law of episcopal morals demonstrates the shallowness of the idea which pervades its specifications, in which no sort of notice is taken of the peculiar intent, requisite to prove and constitute criminality in a Bishop.

The 1st specification charges him with having contracted debts without any reasonable prospect of being able to pay them.

The 2d with falsely pretending those debts were incurred in his venture for christian education at Burlington.

The 3d, 4th, 5th, 6th, 7th and 8th with having procured sundry notes from several persons, at many different times, under the promise to apply them to renew, and not to increase the responsibilities of the persons advancing them to him; but that he did use them to *increase* and not to diminish or to renew the existing liabilities—which *acts* the law calls the *crime* of getting money under false pretences—or *cheating*.

The 9th, 10th and 15th with obtaining money upon false representations of the value and adequacy of the security given or to be given.

The 11th, 12th and 16th with obtaining trust moneys and applying them to purposes other than the trust, for his own use.

The 14th with drawing checks in payment of debts, when he had no funds to meet them.

The 17th with borrowing many thousands of dollars when utterly insolvent, and knowing himself to be so, without disclosing that fact.

The 18th with inducing a man to refrain from presenting an order on a fund, under promise of meeting it himself; and of failing to pay and afterwards assigning the fund, i. e. with cheating the man out of his money.

The 19th and 20th with forging Horace Binney's name for \$1000 and then falsely stating he did it by authority—for the benefit of the Church.

The 21st with getting work done on promise of security—and failing to perform it.

The 22d with getting possession of a security of a lady, and converting it to his own use without her consent.

The 23d and 26th with intimidating, by violence and threat, two men from bringing certain charges before the Convention and the Grand Jury.

The 27th and 28th with swearing, knowingly, falsely to the value of his property, and to a list of debts, omitting many and large debts.

The 29th with accepting the use of articles sold for the benefit of his creditors, and bought in at gross under-value.

The 30th with numerous and grave false statements in his Protest and Appeal, known to be false.

The 31st with being drunk on one occasion—frequently drinking

in an excessive and unbecoming manner—and immoderate and sumptuous living.

All these specifications state *facts and acts* cognizable by the external senses and capable of material proof.

They were most of them drawn on the strange and exploded supposition that the following passages of St. Paul are, at this day, the law of Bishops :

“ A Bishop then must be blameless, the husband of one wife, vigilant, sober, of good behavior, given to hospitality, apt to teach; not given to wine, no striker, not greedy of filthy lucre; but patient; not a brawler, not covetous.”

“ For a Bishop must be blameless, as a steward of God: not self-willed, not soon angry, not given to wine, no striker, not given to filthy lucre; but a lover of hospitality, a lover of good men, sober, just, holy, temperate.”

With the exception of “ being the husband of one wife ” and “ given to hospitality,” there is scarcely a requisite set down in those passages which the Presenters did not charge the respondent with violating.

Accompanied by the sound exposition given in your judgment, the passage may perhaps be, without much danger, submitted to lay inspection in the vulgar tongue. It was always known that *episcopos* is used indiscriminately for *presbyter*, and what the commentators call Bishop. But our bungling translators have not carefully divined when the same word meant one, and when the other. It is now plain, from your decision, that the word should have been here translated *presbyter*, and not *Bishop*—a signal instance of the danger of translations into the vulgar tongue. Right Rev. Fathers, you will now, I trust, feel the expediency of relieving the Consecration of Bishops from so serious an error, and expunge those passages from that holy formulary, as calculated to mislead its recipients.

Still so much evil has been done by the too free and frequent citation of passages in the vulgar tongue, which unlearned and ignorant men have wrested to their own injury and your annoyance, that I fear to go with a multitude to do evil. I await with anxiety the period when it may be safe for you to exercise your absolute prerogatives, by forbidding the reading or quotation of Scripture in the language of the people entirely—unless by the special permission of the Bishop.

I now, Right Rev. Fathers, invoke your attention to the import of the confession of the respondent—of such error as his conscience accused him of—touching the matter of the presentment.

“ The undersigned, in *prosecuting his plans* of Christian education,

in connection with St. Mary's Hall and Burlington College, *found* that the expenses of the enterprise greatly exceeded his calculations; while the assistance on which he had confidently *relied, perhaps too sanguinely*, fell altogether short of what *he deemed* his reasonable expectations."

This is the episcopal equivalent of the first specification. What were his plans? Why plainly, in the eye of episcopal morality, that was immaterial. The *object* covered and consecrated every plan. Christian education could not be purchased too dearly. It was immaterial whether his plans were prudent or imprudent, feasible or chimerical, practicable or impracticable, rashly or rationally speculative, risking his own property or that of others, were within his own means, or vastly beyond it.

On what were his calculations of the expenses based. On his means of meeting them, stopping when they stopped; or on the chances of gain by the enterprise? This, too, seems to be immaterial; for it is not stated as an element on which the *morals* of the transaction are to be estimated, nor one of which the conscience of the Bishop took cognizance.

The assistance on which he had relied confidently, is left blank. It is immaterial whether *any* had been *promised*, or how much, if any; or whether by responsible or irresponsible persons; or whether he had *confidently* relied on the assistance of Divine Providence interposing miraculously to rescue him from imprudences so great that insanity or dishonesty were the only alternatives which a man of the world would have been allowed to choose between. It fell short of what he deemed his reasonable expectations; but on what grounds his *expectations* were based, and what they were, are in like manner left blank. Whether they were such as a prudent and Christian *man* could, with good conscience, rely on and deem them reasonable, or they were the chances of the interposition of the *Catholic Church*, or the *whole company of the faithful*, or the army of martyrs to their faith in *him*, is left entirely out of the confession.

The hypothesis of the specification is, that Bishop Doane wantonly contracted debts beyond his actual or his reasonable prospective means of payment: and *that*, in the view of the vulgar morality of the world, was immoral. It was simply obtaining other people's money to speculate with it, for his benefit, at *their risk*. The object of the speculation being through the instrumentality of *Christian education* for young ladies and gentlemen in a very expensive manner, hardly purged the dishonesty of the transaction in the views of the *world*.

Had it appeared that responsible men had promised to aid him in the event of disaster, or responsible churches offered to contribute, *that* would have changed the case in the view of the world and of the presenters. But the *confession* leaves the case exactly where the specification left it—a speculation at other people's expense, for the respondent's pecuniary benefit, to be worked out through the spiritual benefit of christian education to certain youths. The assistance expected too sanguinely remains a shadow—a dream, a guess—nothing. As the Confession leaves it, it was left before by the Protest and Appeal.

“To go on at such a rate of *course* involved a debt. The under-*signed had faith in God*, and merging in the work his whole resources and *his credit*, it went on. As prosperity returned to the Country, patronage flowed in upon St. Mary's Hall. And then *success became embarrassing*. Buildings *were to be* erected, and fixtures and furniture *were to be* supplied; and to do this, there was no resource but current income and *pledge of credit*. *Of course* the debt increased. To *provide for it*, paper *must* be used. To be procured, *it must* be paid for. And then, in a *majority of cases*, its discount *must* be had at *extra cost*.”

It is plain that the whole plan was a spiritual speculation, undertaken at the impulse of a predestined necessity; that every step was the consequence of an imperative and fatal “*must*,” and that every thing was done, because from all time the things “*were to be*.”

Nay—the girls' school was predestined to bring forth a boys' school.

“The acceptance of a christian girls' school *created a demand* for a christian boys' school. In 1845 special circumstances” (did it thunder on the left, or how many vultures were seen, in what part of the sky?) “seemed to indicate that the time had come for such an undertaking. A movement was then made for a school for boys, such as St. Mary's Hall was already for girls. The proposition met with signal favor. It was at once said, why not make it a college? The time is propitious. *At any rate* (the usual rate of the Bishop's proceedings) procure a charter, and use it when you are ready. A charter was procured. A site was purchased. The pressure of patronage *forced on the work before its time*, so that at the end of two years the catalogue enrolled one hundred and twenty students. *There was no endowment. There was no monied patronage. Everything was to be done, and nothing to do it with. Everything was done—and done with nothing.*”

An excellent description of omnipotence.

“And the earth was without form and void; and darkness was upon the face of the deep. And the Spirit of God moved upon the face of the waters. And God said, let there be light—and there was light!!!”

“The assistance on which he had confidently relied” was—that the sky would fall and he might catch larks enough to repay the money borrowed by a pledge of—*credit*; and if not—why, the money was planted in God’s vineyard and would bring forth fruit some of these days in Christian education!!

Nothing, Right Rev. Fathers, can better illustrate the difference between vulgar and episcopal morality. Those things in a man of business would have been—a clear case of fraudulent bankruptcy. In a Bishop it has been held by you to be perfectly innocent. The confession does not term it even imprudence, and you bid the victim of such disappointments, on such plans, to go, without day, in peace.

The reason, Right Rev. Fathers, is as plain as the fact. Paley says, the good or evil of an action is to be estimated by its results generalized and in the long run. Now, the acts of a Bishop are no criterion for any one less exalted. No layman has any right to say, what a Bishop may do I may do. Confining it then to Bishops, it is clear that, to create such a school as St. Mary’s Hall for the promotion of Christian education, would in the long run, and if generalized, produce more good than any given amount of money requisite to effect it, left in the pockets of its owners for merely secular purposes. From the height of Heaven the small differences of mine and thine in the paltry pelf of this world vanish by the law of moral perspective. Who could enter the Chapel of the Holy Innocents and see those lovely angels praying for the world, and lifting the soul aloft on the wings of inspired chaunts, and not feel that in comparison with such blessedness it is utterly immaterial that two or three poor widows have been reduced, the funds of the Diocese transplanted and dead; and two or three Jews and brokers depleted and punished a little before their time. On Paley’s principle the matter is plain, by the law of proportion. For the value of a soul being *infinite*, and all worldly goods being *finite*; it is clear that they *all* might be sacrificed, with great gain, for the salvation of one soul—a portion for the Christian education of many. Even if this principle be doubtful—yet you, Right Rev. Fathers, are well acquainted with the doctrine of probable opinions of the Society of Jesus; and surely the opinion of so great a casuist as Paley, would justify, on that principle, any act he might sanction.

I have dwelt on this first case more at large, because it best illustrates the episcopal and the vulgar view of moral duties, touching the things of this world in their relation to the things of the next. In point of value, the relation is—that of an infinite to a finite—in other words, no relation at all. The laws of property are suspended before the infinite purposes of Christian education; and it is folly to quote to a Bishop on fire with such an idea, the maxim of St. Paul intended for the laity, Ye shall not do evil that good may come.

The confession proceeds:

“In this state of things, being entirely left alone, and without advice, every step which he took involved him more and more deeply in pecuniary embarrassments.”

This I suppose is the episcopal view of the seventeenth specification. It is a statement of the progress of events, but not a confession that that course of events was sinful in him, a Bishop; and you, Right Rev. Fathers, have ratified *this also*, as the episcopal rule of morals.

Similar conduct in a layman would have been met in the civil tribunals with short and sharp, and practical questions. If alone, why not seek aid? If without advice, why not ask it? If already embarrassed, why not stop? If every step involved him more and more deeply, why take any more steps? Pecuniary embarrassment is an ecclesiastical circumlocution for getting money you are unable to pay. Every step then in a layman was a new sin. It was adding to obligations already beyond the party's means. It was dishonestly taking your neighbor's bread, and throwing it to the dogs. It was with this erroneous view that the seventeenth specification was written.

We now know that every additional step did not involve additional sin in a Bishop, who was stepping over the ruins of the worldly fortunes of other men, with his eyes fixed on the elevated object of Christian education, with a chance of pecuniary benefit to himself and none to any one else. He meant to pay these debts if he were able; and that *intent* relieved the Bishop from the responsibility for an immorality to which a layman would have been liable, for he is responsible not merely for his intents, but for the *possibility* of performing them. The Bishop had *no sort of rational prospect* of repaying the money borrowed and debts contracted; but because a Bishop, his prospective intention to pay, if ever he could, purges the crime of contracting debts, when it was *certain* that he had not then, and not only not certain, but only remotely possible that by begging he might have the means at some indefinite point in the future. Hence, though a layman is dishonest if he borrow beyond his present means, a Bishop may borrow upon a possibility without immorality, *provided* he intend to pay, if the *possibility* turn into a *fact*!!

“In endeavoring to extricate himself from these embarrassments, he admits that he made representations at the time, he believed to be correct, but many of which turned out in the event to be erroneous.”

We are perplexed by the generosity of this confession, in pointing it to its specification. It, however, probably relates to the representations touching his means and prospects of repaying the enormous sums mentioned in the seventeenth specification. It is open to the observations already made on that specification from the episcopal point of view.

It more properly is pointed at the ninth, tenth, and fifteenth specifications. It establishes, by the judgment of the Court, that it is moral in a Bishop to make representations which he does not know to be true, and which he does not know his ability to make good, provided he have an internal belief of their truth. He is not responsible for the sufficiency of the foundations of that belief, for the existence of the belief, however unfounded or careless, however easy and open the means of correction, it may be, destroys the *intent* to deceive. Thus, in the case of the fifteenth specification, if he believed the *land* offered to Mrs. Roberdit to be worth six thousand dollars, he was justified in so representing to her, though for the purpose in question it was not worth, by reason of the mortgage, which was not disclosed, more than three thousand five hundred. It is plain that Bishops, in dealing with business men on these principles, possess a great advantage, which they will of course, Right Rev. Fathers, always be careful to wield to purposes as elevated and pure as christian education.

Does it likewise cover the checks so repeatedly drawn *on no funds*? We then understand the very advantageous terms of episcopal credit on a pinch in Bank. On those terms the “*nolo episcopare*” would be rare among the sharpers of Wall-street. But of course so delicate a privilege is not contemplated ever to be vested in such hands; and any who should offer money to you, Right Rev. Fathers, for an impartation of such special powers for purposes of secular gain, would be fitly met with the apostolical rebuke to Simon Magus.

“He was also led by his too confident reliance on anticipated aid, to make promises which he fully expected to perform; but which experience has taught him were far too strongly expressed.”

This clause of the confession is supposed, Right Rev. Fathers, to express the episcopal view of the various allegations of fact which in a layman would have been, in the eye of the law, obtaining money under false pretenses, cheating and swindling.

The expectation of being able to perform the various promises under which he obtained the various notes, securities, and indulgences,

which he is alleged to have abused and perverted, proves in a Bishop that the subsequent misapplication of the securities was not criminal. Such *expectation* is inconsistent with an intent to cheat. It is an intent to do what the party has promised to do. When afterwards finding some aid, anticipated, but not promised, to fail, he applies the securities to a different purpose, it is with an intention to restore them, not ultimately to cheat the party out of them. This, in the eye of episcopal morals, is no *crime*. It lacks the essential ingredient—intent to commit a crime. It is, on the contrary, done with the best of intents—the intent to restore the note or security, or to save the person harmless. It is true, this is not the purpose to which he has *promised* to apply and confine the security or the note. But as to those promises, “experience has taught him they were far too strongly expressed.” Thus a question of morals is resolved into one of dynamics. The Bishop is at liberty to procure securities for one purpose and to promise so to apply them; but if he do not, but finds the failure of anticipated aid requires him to apply them to some other purpose, the doing so proves no criminal intent, but simply that his promise to apply them to another purpose was “far too strongly expressed.” It is surely incumbent on men, dealing with Bishops enjoying such license, to look well to the strength of the language they use when procuring notes or papers for special purposes.

This part of the confession gives us the episcopal key to the 3d, 4th, 5th, 6th, 7th, 8th, and other of the specifications, having the ugliest aspect in the eye of the criminal law; but which this interpretation entirely relieves from their unpleasant aspect. From a *crime* it is alleviated into an innocent miscalculation of the strength and ability of the party to resist, under the pressure of circumstances, the temptation to do it.

Thus, when Bishop Doane procured the notes from Hays for renewal, he meant so to apply them. He found, other anticipated aid failing, he needed those notes for discount to procure new funds, and he could not *spare them for renewal*; he, therefore, discounted them, obtained new loans on them, doubled Hays' responsibility for him, without his consent and knowledge, and against his will, but with *the intent, if he were able*, to protect him from loss. The notes are finally protested, and Hays has to pay both notes. This in a Bishop is not swindling. It is only a case where he has been “led by too confident reliance on anticipated aid, to make promises which he fully expected to perform; but which experience has taught him *were far too strongly expressed.*”

In a layman, so differently are the same acts viewed, it would be

said, not that the promise had been too strongly expressed, but that it had been criminally violated. The intent to secure or save harmless the party deceived, and trusting to the violated promise, would not be received even *in extenuation* or alleviation of the guilt. No stress of circumstances is held to justify or excuse a *felony*. The intent to save a party from ultimate loss by the act, does not change the character of the act. That is the civil law of the State, even touching clergymen; such is the case of Dr. Dodd. The party intends to do the act in violation of the promise professed, and *that* is the crime in the law. The Bishop has the greater law of liberty for his guidance. He may do and intend *all* that for which the layman goes to the penitentiary; but unless he further intends never to save the cheated party harmless in the end, he is not guilty of any crime against the moral code of Bishops.

So when Bishop Doane procured the suspension of Hays' order on Boston, on his promise to pay it himself, his failure to pay it, and also his own assignment of the funds in Boston liable to it, after his own failure, was not immoral nor dishonest in him. He had promised to pay, and at the time meant to pay. He afterwards found he needed as well the money he was to have had, as the Boston fund—from his too confident reliance on anticipated aid; he, therefore, is driven to the unfortunate necessity of failing to pay himself, and of assigning the Boston fund, because experience has taught him his promises "were far too strongly expressed."

Such, Right Rev. Fathers, is the liberty with which Christ has made you free!! Marvellously indeed, and greatly to be praised, is the *benefit of clergy*!!

The confession proceeds—

"He was also induced, for the sake of obtaining money to meet his necessities, to resort to methods by the payment of exorbitant rates of interest on loans, which he did not suppose were in contravention of law, and which common usage seemed to him to justify."

This points to the 25th specification. It settles that in the view of the episcopal morality, a Bishop may pursue christian education—so priceless is the blessing—on Capital borrowed at exorbitant interest, when unable to pay by any human means, and driven to pay, besides the value of the money, exorbitant interest by way of insurance on the speculation. Ignorance of the law—unheard of in criminal courts as protection for the most ignorant layman—avails in a Bishop to exempt him from any sort of moral turpitude. In him also, dealing with usurers, is justified by *common usage*.

It is one of the peculiar prerogatives of a Bishop, that, while he

cannot be held liable for a crime by common usage, he may yet be protected from it by such usage.

“He also, in entire confidence in his ability to replace them, made use of certain trust funds in a way which he deeply regrets, and although they have long been perfectly secured, does not now justify.”

It is remarkable, Right Rev. Fathers, that the confessor sometimes does illegal acts with the same professions that men, not Bishops, throw over them. No lawyer has ever met a man who committed a breach of trust without intending to replace the fund out of the proceeds of the speculation. Neither the intention to restore, nor the regret for the misapplication, at all alters the offence in a layman. In a Bishop they extract the guilt and reduce it to a simple error. It is curious that the respondent should have entertained lower notions of his privileges than you, his judges. He does not *now* justify his own conduct touching these trust funds. Yet you—so profound is your conception of episcopal impeccability—pass over his own confession of acts which he does not venture to justify, pronounce him in your eyes innocent, and bid him go in peace. You could not even tell him to sin no more—for that would justify his judgment of his conduct.

He then confesses his illness, which was “mainly instrumental in his failure.”

We are delighted to learn that it was not chiefly attributable to his own imprudences, or any rash speculations, nor to the exorbitant rates of usury he continually paid. If it do not relieve his creditors’ sufferings, it must greatly console his own mind to think that his misfortune, which fell so heavily on others, was no fault of his; but one of the inscrutable judgments of God, to which the best as well as the worst is liable.

“The perplexity arising from this failure, with the protracted infirmity which followed his sickness, made him *liable* to many errors and mistakes, which might *easily* bear the appearance of intentional misrepresentation.”

He does not here confess any error or mistake, but only the *liability* to them. It is presumed that prior to the attack his episcopal Grace had exempted him from such liability, since nothing but a manifest weakening of that great guard could have occasioned that liability to assume the shape in act, of *intentional misrepresentations*.

Shall we ascribe to this illness, which he seems to insinuate had fallen chiefly on his moral faculty, the representations on which Hays and Deacon were induced to subscribe to the \$50,000 loan?

He proceeds—

“In conclusion with the assignment of his property, he set his name, under oath, to an inventory of his goods, and also to a list of his debts, *which he believed to be correct*; an act, which he grieves to find, has given rise to an impression in the minds of some that he exhibited an insensibility to the awful sanctions of the oath of a Christian man. But while he laments the *impression*, he declares that this *act* was done under legal advice, and in the firm conviction of its correctness.”

This refers to the 27th and 28th specifications.

Some ambiguity obscures the precise meaning of this passage. He confesses having sworn to a list of his property, which he believed to be correct. Surely such an oath could give no foundation for the scandal which followed it. It is just possible that here, as in regard to the cost of his plan of Christian education, the grounds of the belief, the diligence in ascertaining the truth of his belief, are treated as matters immaterial. If the belief existed, no matter how careless the inquiry, or whether any inquiry at all were made; if he *believed* it to be correct, he was justified in swearing that it “*was a true and perfect inventory of all his real and personal property, together with the value thereof, as near as he can ascertain*; and that it is a true, full, and perfect list of his creditors, with the amounts severally due to them, as far as he *hath been able to ascertain*, according to the best of his *knowledge*.”

Those forms of affidavits were manifestly drawn for laymen by laymen, who swear only about *facts*, after diligent inquiry according to their knowledge; not for Bishops who know nothing of facts, and deal only in faith. It was only natural that they should judge of the oath of a Christian *Bishop* by rules only applicable to a Christian *man*. They could not be expected to be cognizant of the grave differences between the two, which hitherto had never been the subject of legal exposition, nor indeed had any example of it been known to occur. It is one of the many cases in which you are called on to bear with the ignorance of the laity in episcopal morals. It is however, a considerable consolation to know, that after your luminous exposition of the immunities of Bishops in the matter of judicial oaths, such oaths will create no impression in their minds of any insensibility to those awful sanctions. So clear has been your exculpation of the act, that you will hereafter be spared the humiliation of one of your order, invoking the “legal advice” of a layman to extenuate the perjury of a Bishop’s oath.

There is a species of oath which, from the haste required by the pressure of business, and the discriminating “conviction of its correctness” with which it is taken, has acquired a proverbial reputation

under the name of "the custom house oath." The "legal advice" probably proceeded from one conversant with that department of practice—whence alone in civil proceedings could he have drawn the happy analogy which your decision has now forever consecrated as the "Bishop's oath." Henceforth the two will stand together as twin relations of the "awful sanctions of the oath of a Christian man;" and so soon as it becomes to be understood that they are not to be taken as true without many grains of allowance, the guilt of perjury will entirely vanish in the recognised rate of legalized alloy.

Yet Right Rev. Fathers, we are bewildered by a double confession and an ambiguous construction.

If the confessor meant that the "legal advice" convinced him of the correctness of swearing to the truth of the list of debts, *knowing that some debts were excluded*, we are relieved of all difficulty in reconciling the two confessions; and your decision on Bishops' oaths acquires a new significancy.

But if he mean that he took the oath with the belief that all his debts were in the schedule, then we feel embarrassed touching the *episcopal fund*.

The confessor in his "protest and appeal," informs us :

"It has been stated under the foregoing specification how the list of creditors was made out, and under what disadvantages. The matter of the *episcopal fund* was not regarded as an *ordinary debt*: and the *purpose, from the first, was entertained* to provide for it distinctly."

This seems to the unaided reason of plain men to exclude the possibility that the list was either supposed or intended to "be correct" in its enumeration of his debts. The *episcopal fund* was not forgotten, but it was "not regarded as an ordinary debt." He therefore was contemplating its nature. And "the *purpose from the first* was entertained to provide for it distinctly."

Being thus not an *ordinary debt*, the purpose was entertained to provide for it distinctly from the ordinary debts. It was therefore left out of the list, not from forgetfulness, but on "purpose;"—a purpose "entertained" from the first, and therefore a deliberate purpose.

This fact, Right Rev. Fathers, the eye of flesh can know only from the protest and appeal. You knew it by that apostolic intuition which revealed to Peter the pious fraud of Ananias and Sapphira.

The crime of Ananias and Sapphira was retaining part of the price of the land, while pretending to dedicate the whole to the service of God. The second specification imputed to the Bishop of New Jersey such a lie to the Holy Ghost. It charged him with disguising the pursuit of filthy lucre under the pretext of a venture for christian education.

The contrast of your judgment with his on the moral quality of such acts illustrates, with singular aptness, the great distinction between vulgar and episcopal morality. The layman for such a deception was chastened by the heaviest scourge of God at the hands of his Apostle. The Bishop for such a suppression of truth and suggestion of falsehood, is bidden to go without day, in peace, by the successors of that apostle—the heritors of his spiritual endowments.

Had you considered that the same rule of morals measured the conduct of Bishops and laymen, then your discharge of the Bishop, where Peter punished the layman, would be a grave reflection on *his* justice. It would look like an appeal from the servant to the master. It would involve a reference to that occasion where the servant invoked fire on the head of his master's enemies—and met his rebuke, that he knew not what manner of spirit he was of.

This you, Right Rev. Fathers, are too reverent to venture towards that apostle. The difference of your judgment, under the same inspiration, results from the different *persons* before your tribunal and his. You rightly absolve the Bishop, by the *benefit of clergy*, for an act which the less fortunate layman had to suffer for at the hands of the Apostle.

Indeed, it is clear that you did not design to overrule that early and leading case of episcopal procedure. On the contrary, throughout the proceeding, you have been careful to pursue the precedent, and emulous of its loftiest prerogatives.

The proceeding there was unembarrassed by presentments or pleas, or writings, or evidence, or counsel, or canons. The Apostle was judge and prosecutor, his intention was witness, and the half confession, at once the crime and the condemnation.

A due consideration of this case, and of the fact that you are the successors, in matter of discipline, of the judge who made that precedent, would have relieved much of the perplexity occasioned to the laity by your manifest prescience of the purity and uprightness of the Bishop of New Jersey, prior to the proofs of the paucity and frailty of the witnesses of the Presenters, whom you had never seen; of the inadequacy of their proof, which you had never heard; of the certainty that a slight censure was the heaviest possible punishment you could be induced to inflict by their evidence; of the strong probability, almost amounting to certainty, that you would acquit him entirely; of the honesty and impartiality of the committee of purgation of New Jersey, in the purgation at which you were not present. And the same intuition assured you of the confinement of the power of three Bishops to present to the cases of heresy only in the entire

silence of the law. Indeed this intuitional inspiration was manifested in a yet more singular manner. Not only did you give no credence to the reiterated statement of the Presenters, that they were ready to prove the charges, which you intuitively knew could not be proved; but, the Bishop of New-York divined, prior to the evidence, not only how he should vote, but also how the Bishop of Massachusetts would vote; and so confident was he in the correctness of his intuition, that he made it the basis of a proposal to *pair off*. It would seem however as if this faculty is not equally luminous in all episcopal minds, for the Bishop of Massachusetts declined, on the ground that he did not know how he should vote till he had heard the evidence.

You were careful also to make this early precedent the only rule of your proceeding. As in that case the Apostle, so you in this, held yourselves bound by no canons, no laws, no rules. You knew your power to proceed, from your own internal fountain of power. You proceeded as to you seemed good, and were quite as regardless of forms prescribed, as was Peter before they had been dreamed of. The result was different—but any result was in your discretion; and the difference of the persons more than justified it.

Thus you have, by this great judgment, reversed the precedents of centuries, not wantonly, but only that you might go to the feet of the Apostles, whence your power flows, and wield it under the inspiration which presided at its first exemplification. Your bitterest opponents can appeal to no more primitive and apostolical antiquity.

The residue of this important paper may be disposed of in few words, so far as it is of public and not merely personal interest.

The good people, who were somewhat shocked at the language of the Protest and Appeal, will be relieved to learn that “penned under the strong excitement of the moment,” there are parts of it which he does not now justify. It would be more satisfactory to know the precise passages covered by this concession, and whether his conscience, charging him with error touching his brethren, the three Bishops, is silent touching the language used in reference to the “four laymen.” It would throw light on the structure and workings of the episcopal conscience.

It is, in view of the mode of their creation, of some moment to have an express acknowledgment from a Bishop, of his intention to pay his debts contracted for the cause of Christian education—a cause which, having suspended the ordinary rules of honesty and plain dealing among men of the world, might with more consistency perhaps have been made effectual to the entire obliteration of all responsibility on that account. It savors, however, a little of episcopal mo-

rals, that "*an enterprise*," has been undertaken for the discharge of the mortgage debt by a sort of forced loan or benevolence. This would seem to *shift*, not to *extinguish*, the Bishop's responsibilities, and savors a little of robbing Peter to pay Paul, to lay eyes.

It is of more public importance, Right Rev. Fathers, that the Bishop of New Jersey confesses, "that in the course of all these transactions, *human infirmity* may have led him into many errors," but while admitting the possibility, he is careful, Right Rev. Fathers, not to implicate your order by confessing *any fact*.

"If scandal to the Church, or injury to the cause of Christ have arisen from them," (i. e. those errors admitted to be possible, but not to have been committed) "they are occasion to him of mortification and regret." i. e. hypothetically—not that he has ever actually *felt* those feelings.

"For these things, in all humility and sorrow, before God and man, he has *always* felt himself liable to and willing to receive the friendly reproofs of his brethren in Christ Jesus," (excepting of course, the obnoxious 'four laymen,') "and especially of the Bishops of this Church," (excepting the three Presenters by their letter.)

You see, Right Rev. Fathers, that he is careful to the last never to compromise the independence of his order and yours. He never for a moment contemplates your right to try him. He contemplates responsibility to no compulsory and *unfriendly* forum.

This confession is quite as remarkable in what it omits as in what it contains.

The Bishop's conscience does not charge him with having sinned in signing Mr. Binney's name without his authority; and your judgment in dismissing the presentment, establishes your concurrence, in his opinion, that such an act in a Bishop could not be sinful.

The Bishop omits all allusion to the specification concerning sumptuous living, and the undue use of intoxicating liquors; but apparently you considered the former as merely the episcopal interpretation of the order, to be "given to hospitality."

The omission of the *latter* from the confession is probably justified by the practical confession in the face of the court. It was disposed of by a form of trial rarely now used, but still allowable in the civil courts—the trial by inspection—which of course being only an impression on the senses of the Judge, cannot get on the record.

This also you considered venial, and passed without punishment, as another of the *benefits of clergy*.

It was fitly omitted from an instrument which was a confession of innocence.

Upon that confession it was fit that you should order that the presentment be dismissed, as containing nothing worthy of trial, and the accused go free, without a day of account.

The various grounds in the recital given for the decree, might, before a lay political body, suggest that a result had been obtained by uniting several reasons for the dismissal, no one of which could secure a majority of the body, but the several powers of each united could attain the common object. But before your august tribunal such a supposition is inadmissible. The word *therefore* in your decree binds each Bishop to an affirmance of every ground assigned for the decree.

You have therefore unanimously established that none of the acts charged to have been done by the accused are, taken with the confession, immoral or criminal in a Bishop.

His character of Bishop therefore exempts the accused from the imputation which would, by the civil law, lie against a layman who should do the like.

This decision, Right Rev. Fathers, you cannot fail to perceive, gives you great advantages over men of the world in transacting worldly business, which, however, you will be careful never to pervert from pious to profane uses. But for those pious purposes you may make the most solemn representations, and yet blamelessly find, when you break them, that you "expressed yourself far too strongly." You can pledge an oath on "legal advice," and swear to a fact upon belief, without inquiry. By simply intending not to cheat, you can cheat with moral propriety. By intending to save the party harmless, you can misapply securities procured for renewal, so as to create additional responsibility. By intending to replace trust funds, you can, with moral propriety, violate the orders of the law, and for your own benefit jeopard them, without the consent of the owners. You can speculate in Christian education, without being at all responsible for your calculations, for prudence in plan, moderation in view, reason in your expenditures, or economy in your conduct. You can deal without contamination with usurers for this holy object, and rush headlong, blindly, with your speculation, into certain bankruptcy. You can contract debts and borrow money when utterly insolvent, to an amount utterly beyond your means of payment, provided you mean to pay whenever you are able, or if your scheme succeed. You may offer land, as security, at its fee simple value, without disclosing mortgages previously binding it. You may, on inadequate security, procure subscriptions to relieve yourself from debt, on promise to apply it to liquidate debts of the subscribers, and then apply the money to other purposes.

These are some of the things you have said, Right Rev. Fathers, are right in a Bishop. This benefit of clergy is great in the transaction of worldly business—with men whose hands, and tongues, and oaths, and consciences, are bound and hampered by the rules of vulgar morality. For the cause of religion, for the promotion of Christian education, for the building of churches and endowing of parishes, for all *pious uses*, these immunities give you facilities almost incalculable. They have already acquired enough notoriety to get a name by reputation. In laymen they would be *frauds*. In Bishops they acquire, from the person and the object, the quality of *pious*. The world blends the two qualities, and demonstrates them “*pious frauds*.” Their entire innocence in episcopal personages is amply attested by their great prevalence in former times. Some of them seem forbidden by language of some strength in the Scriptures. But the usage of ages, and the tradition of the early church, that such things have been more or less practiced, must be allowed to control what might otherwise seem the better interpretation. They are fully covered by the rule *Quod semper, quod ubique, quod ab omnibus*, from the days of Callistus down; and you have covered them from the sneers of the world by the broad shield of your unanimous judgment.

Henceforth no man will be so rash as to impeach their purity; and you will be left to pursue your expanded schemes of Christian education, propagation and regeneration, with all the freedom of this great license. If, thus endowed, the land be not studded with pious monuments of your zeal, you will prove singularly neglectful of your rich and exhaustless privileges. If ruin accidentally befall those on whose credulity you have for such pious objects drawn, a committee will easily be found to “undertake an enterprise” for their relief; and should they fail, you can teach them piously to regard it as money found in one part of God’s vineyard and transferred by his vine-dresser into another part of his vineyard. If it bear not fruit *here*, it is treasure laid up in *heaven*, where moths and rust do not corrupt, and Bishops do not break through and fail.

It is not supposed however, Right Rev. Fathers, that this rule of episcopal morals is intended for every day application in the private and personal concerns of all of you. There are many of you, who in such cases will, *ex gratia*, condescend to conform to the vulgar rule. It is chiefly in ecclesiastical and spiritual matters that the more liberal rule of episcopal morals is indulged; and it was the fear, you might in them be too much restrained by the puritanical notions of the vulgar, that induced you so strenuously to vindicate this great

immunity of your order. It may, if hereafter needful, be applied to mere personal and private transactions, for which this case has paved the way, under cover of more public considerations.

Such is your moral position—your legal position is equally grand and imposing.

By your judgment the whole august fabric of Constitution and Canons, reared by the wisdom of generations, fondly adored as the inviolable sanctuary of religious freedom, has been prostrated. It seemed solid as the Rock of Ages—you have shown it to be a castle of cards before your breath.

Yet, Right Rev. Fathers, allow me to beseech you, not hastily nor rashly to follow up your decision by formally and openly annulling those Constitutions and Canons. Do not *now* repeal them by authentic acts. Still allow them to stand as convenient screens between you and the fanatical multitude. Their existence imposes no restraint on your power, no limit on your authority. When convenient, you can act according to them—when necessary, you can, under any plausible pretext, disregard them. You are now engaged with all apparent earnestness in debating, passing, repealing, opposing, or modifying Canons. You know, it is all a futile work—since the result can neither add, nor take from, nor direct your discretion. Yet you go through this cumbersome form for the safety and security of the Church, against the outbreak of fierce passions, which an explicit declaration of your real power would occasion. I pray you, continue this wise disguise till you have gradually instilled your principles of episcopal prerogatives and morals into the rising generation, accustomed them to the exercise of arbitrary acts under spacious but hollow pretexts; accomplish what you can from time to time by relaxing legislation, concentrate in your hands as much of mere discretionary authority as you may be able to secure, till finally you may procure a *lex regia*, such as transferred to the Roman Emperor all the power of the Roman people, and vested him with a legal right to repeal and enact laws at his pleasure.

In this way, Right Rev. Fathers, you can attain your end gradually, slowly, but effectually and peacefully—and soon enough for a power which is as perpetual as the foundations of the world, and which nothing can shake but the last trump.

But now, in this day, and in this country, at once and openly to abrogate all the constitutions and canons to which the people are superstitiously attached, would lead to grave disorders, and bring down on your Holy Order the execration and the might of an outraged and furious people.

They are already half convinced that your Holy order cannot be entrusted with the administration of discipline over its members; and they are fast coming to the conclusion that a court of laymen is the only one likely to hold you to the strict rule of vulgar morality. Any step to throw additional obstacles in the way of your trial—as by the proposed canon—will be regarded by them as suspicious, and may tempt them at once to that disastrous step. And more decided advances in the direction you have taken might madden them to work your overthrow. Be therefore wise as serpents, by seeming to be harmless as doves.

I turn for a moment from the public to the more private results of this great process.

While defending the towers of episcopacy by new bulwarks, and lifting them above the floods of popular control, you have vindicated the personal purity of a persecuted Bishop, and returned him in peace to the arms of his adoring and devoted children. The diocese of New Jersey, so long the theatre of fierce conflict, will now sink into peaceful repose. The four laymen who drew the sword to impose on the neck of the Bishops the yoke of vulgar morals—a yoke which neither he, nor his predecessors could bear—have been signally discomfited. They have been flung from your bar prostrate and covered with the ignomy of false accusers, and overwhelmed by the torrent of invective of the Protest and Appeal now sanctioned by your judgment. The one hundred and forty recreant members of the church, who gave aid and comfort to the intruding Bishops, have met the fit rebuke of their treason; and nothing but the prudent concealment of their names withdraws them from the thunder of the episcopal anathema. The crowd of the discontented, who hung on the skirts of the assailants, fearful to join the attack, yet anxious to join the victorious pursuit, who envied the immunities of the Bishop and longed to restrict him to the measure of their privileges, have been silenced for ever. The thousands of the church, of low latitudinarian views of the episcopacy, who think it of human origin, subject to human infirmity and liable to human control, who measured the Bishop's morals by the strict standing of the laity, and mourned night and day the pollution of the sanctuary by his presence, who shrank profanely from his communion table and restrained their children from seeking confirmation at his hands, who looked impiously to your judgment seat as their refuge from a legitimate ruler, whom they regarded as a tyrant, and refrained their steps from foreign and unauthorised communions only because they trusted your judgment would relieve them, who erroneously supposed the Bishop's morals and life a fit example for the flock, and

feared their children might make his conduct the excuse for imitation, these unfortunate and erring people, convinced by your judgment of their error, and cut to the heart by the memory of their ungrateful persecution of their spiritual father, will now, in sack-cloth and ashes, with tears of repentance, acknowledge their sin and seek his forgiveness. They will try to merit oblivion for the past, by obsequious submission for the future, and to obscure all traces of former opposition by making their morals conform to his own.

The faithful of the Episcopal See of Burlington—among the faithless faithful only—transported at the news of the delivery of their Bishop from what they were taught to consider a den of lions, poured from their homes to the quay to welcome his return. The colder salutation of the hand was changed to the primitive kiss of sisterly affection. The honorable women—not a few—came forth to do him honor; and the young men and maidens streamed with chaplets of flowers, to welcome his restoration. The shades of evening closed over the blessed scene, only to be dispelled by the glare of bonfires and illuminations, and the desolate home of affliction was alive with the voice of merriment and the chaunt of exultation. It was as when Peter, delivered by the angel, stood before the door, and the maiden opened not the gate for gladness.

This venerable Father of the faithful is a character of no mean or ordinary mould. He is cast in large proportions, of heroic stature, a man of history, after the fashion of the great Cardinal—though *less*, according to the diminished stature of modern times. The language of prose cannot rise to his elevation; and my pen fails in the ambitious flight. I turn thence to

What the lofty tragedians taught in chorus or iambic—teachers best of *moral prudence*, and invoke their pencil to portray him.

This Cardinal,

Though from an humble stock, undoubtedly
Was fashion'd to much honor from his cradle.
He was a scholar, and a ripe and good one;
Exceeding wise, fair spoken and persuading:
Lofty and sour to them that lov'd him not;
But, to those men that sought him, sweet as summer:
And though he were unsatisfied in getting,
(Which was a sin,) yet, in bestowing, madam,
He was most princely. Ever witness for him
Those twins of learning that he raised in you,
Ipswich and Oxford. Yet—

He was a man

Of an unbounded stomach, ever ranking

Himself with princes; one that by suggestion
 Tied all the kingdom. Simony was fair play:
 His own opinion was his law; i' the presence
 He would say untruths, and be ever double,
 Both in his words and meaning. He was never
 But where he meant to ruin pitiful;
 His promises were, as he then was, mighty;
 But his performance as he is now, nothing.
 Of his own body he was ill, and gave
 The clergy ill example.

In the humble prayer, Right Rev. Fathers, that meditating on your judgment, illustrated by such an example of the virtues of a Christian Bishop, stamped with the seal of your unanimous approval, the Church may derive great comfort and edification.

I remain,

Right Rev. Fathers,

Your dutiful Son,

ULRIC VON HÜTTEN.

Feast of St. Peter of Alcantara, 1853.





PHOTOMOUNT
PAMPHLET BINDER

Manufactured by
GAYLORD BROS. Inc.
Syracuse, N. Y.
Stockton, Calif.

BX5960 .D63H8

An epistle congratulatory to the right

Princeton Theological Seminary-Speer Library



1 1012 0004 0479